

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.
AMD-04-029

WILLIE MITCHELL,
SHELTON HARRIS,
SHELLY WAYNE MARTIN,
SHAWN GARDNER,

Defendants

VOLUME XVIII OF XXXVII
Wednesday, October 29, 2008
Baltimore, Maryland

Before: Honorable Andre M. Davis, Judge
And a Jury

Appearances:

On Behalf of the Government:
Robert Harding, Esquire
Michael Hanlon, Esquire
On Behalf of Defendant Mitchell:
Laura Kelsey Rhodes, Esquire
Michael E. Lawlor, Esquire
On Behalf of Defendant Harris:
Gerard P. Martin, Esquire
Paul Flannery, Esquire
On Behalf of Defendant Martin:
Thomas L. Crowe, Esquire
James G. Pyne, Esquire
On Behalf of Defendant Gardner:
Adam H. Kurland, Esquire
Barry Coburn, Esquire

Reported by:
Mary M. Zajac, RPR
Room 5515, U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

1 (Proceedings at 9:44 a.m.)

2 THE COURT: I understand we're still waiting for a
3 juror.

4 MR. KURLAND: Judge, can I be heard briefly on one
5 issue which I believe relates to Detective Welsh, the officer who
6 is going to testify concerning the Lee shooting?

7 THE COURT: Absolutely, Mr. Kurland. Good morning.

8 MR. KURLAND: Again, I know there's some, amongst
9 defense counsel there was some about whether or not he's going to
10 testify today. But assuming he testifies today, I just wanted to
11 get clarification. I thought about it and went back on my notes
12 about the Court's ruling and i just want to make clear that
13 they're going to be able to testify that there was a death in
14 order to, as fair evidence with respect to the corroboration of
15 the statements concerning the bodies. But then with respect to
16 the underlying substance of what actually happened, it's my
17 understanding that this is setting up ballistics testimony.

18 So the government will be able to testify that there
19 was a shooting, but unless I get into it on cross, I don't think
20 they should be able to get into the fact that the guy that wasn't
21 shot ran away and first called County Sports, because that goes
22 beyond the ballistics.

23 That might be opened on a question from cross. But
24 it's my understanding that if it's just limited to ballistics at
25 first, that the shooting and then the bullets are ultimately

1 going to be matched, but that they shouldn't be able to get into
2 the fact that Lee had drugs in his house and that the third
3 person ran away and called County Sports.

4 And I just want to make sure that that's the parameters
5 of the direct testimony, that's not going to come in on direct.
6 And whether it's open or not depends on what type of cross
7 examination the defense does.

8 THE COURT: Let me hear from Mr. Harding, or Mr.
9 Hanlon.

10 MR. HARDING: May I have just a moment, Your Honor?

11 THE COURT: Certainly.

12 MR. HARDING: Can I respond when Detective Benson gets
13 back, Your Honor? I don't know where he is.

14 THE COURT: Certainly. But I'm not sure you need him
15 to answer this specific question. I take it what Mr. Kurland is
16 saying in light of my ruling yesterday is that I think I used the
17 term "sanitized" or something like that. But anyway, the point
18 of the Lee/Epps shooting is to show the connection and provide a
19 basis for an argument with respect to the continuity of
20 possession and use of these weapons as a basis for circumstantial
21 evidence, to show that, for example, it is likely that the person
22 who was involved in the Wyche murders was also involved in the
23 Tonya Jones Spence murder, and that's revealed by the fact that
24 the two respective weapons, one used in the Wyche murders and the
25 other found near or at the scene of the Tonya Jones Wyche (sic)

1 murder were several weeks after the Wyche brothers murders and a
2 month or so before the Tonya Jones Spence murder, were present at
3 the same time and were used in a street shooting in Baltimore
4 City. And I wouldn't preclude evidence that the street shooting,
5 the uncharged shooting was drug-related.

6 So Mr. Kurland is essentially asking, how far do you
7 intend to go --

8 MR. HARDING: Well --

9 THE COURT: -- in proving up the Lee Epps shooting?

10 MR. HARDING: I don't intend to go at all far, Your
11 Honor. But the reason I wanted to talk to Benson is that there
12 is this telephone contact with County Sports. And I know that
13 the agent who's going to be testifying about telephone toll
14 analysis in a general way at the end of this trial, I think he
15 intended to include the fact that there was a telephone call that
16 connected the Lee shooting to County Sports at least.

17 THE COURT: Okay.

18 MR. HARDING: Which is the place that was owned by
19 Goose and where Mr. Martin also worked. That's not ballistics
20 evidence. That's telephone toll evidence.

21 THE COURT: Exactly. And I'm trying to understand the
22 relevance of the telephone toll records in that regard.

23 Who do you assert made the phone call and using what
24 phone?

25 MR. HARDING: That's what I need to talk to Detective

1 Benson about, Your Honor. I'm actually a little hazy about this,
2 Your Honor.

3 THE COURT: Okay.

4 MR. HARDING: But the point is we're trying to connect
5 up some disparate events in this case that the defense claim are
6 not connected.

7 THE COURT: Right.

8 MR. HARDING: The telephone toll is not ballistics
9 evidence but it's connecting evidence. It connects up the events
10 in this case.

11 THE COURT: That's what I'm trying to understand. What
12 does it connect? Apart from the ballistics, what does the, I
13 guess my question is, what does the Lee/Epps shooting have to do
14 with any of the other events in this case? Do you understand the
15 question?

16 Are you suggesting that Mr. Martin called, that Mr.
17 Martin was there? You say you think Mr. Martin was there at the
18 Lee shooting. Are you suggesting that after the hit, that Mr.
19 Martin called Goose or called County Sports?

20 MR. HARDING: Well, it is something like is that, Your
21 Honor. But I'd feel more comfortable if I could talk to
22 Detective Benson before I actually answered the Court's question.

23 THE COURT: Sure. Sure.

24 If you're suggesting or if the evidence is that a phone
25 shown by other evidence to be associated with any defendant

1 immediately after the Lee/Epps shooting, that there was a call to
2 County Sports owned by Goose --

3 MR. HARDING: Yes.

4 THE COURT: -- then I would probably admit that.

5 MR. HARDING: Okay. Thank you, Your Honor.

6 THE COURT: But that really does now take us into
7 404(b) .

8 MR. HARDING: Well, we don't contend that any of this
9 evidence is 404(b), Your Honor. The case law is quite expansive
10 in terms of permitting the Court in a RICO or 1959 prosecution to
11 let in crimes that are not charged as evidence of the existence
12 of the enterprise and as evidence to show the ongoing pattern of
13 racketeering activity.

14 I'm sure the Court is familiar with the case law in
15 this area. And so we don't consider any evidence that relates to
16 firearms or shootings, even though it's uncharged, we don't
17 consider it 404(b) evidence. We consider it intrinsic to the, to
18 the issue of did an enterprise exist and was there a pattern of
19 racketeering activity.

20 We think that the case law fully, especially in this
21 circuit, fully supports us in this.

22 THE COURT: Why didn't you charge it as a racketeering
23 act, then?

24 MR. HARDING: Judge, prosecutorial prudence prevents us
25 from charging crimes we don't believe we can prove beyond a

1 reasonable doubt. We could have charged a lot of things as
2 racketeering acts, but the fact is we were trying to charge
3 things that we think we can prove beyond a reasonable doubt.
4 This is evidence that shows the existence of an enterprise and of
5 racketeering activity, regardless of whether we can prove beyond
6 a reasonable doubt who murdered Eric Lee.

7 THE COURT: Just because somebody called County Sports?
8 See, that's the problem I'm having. What if there were
9 substantial evidence that Joe Blow killed Eric Lee? I mean,
10 surely, you wouldn't be standing there suggesting that just any
11 old body who happened to kill Eric Lee, that you could prove
12 that. I'm having some difficulty. But I understand you haven't
13 spoken to Agent Benson and you will.

14 Are we going to get into that today?

15 MR. HARDING: No.

16 THE COURT: No. Okay. So we have time.

17 MR. KURLAND: Welsh is not testifying today?

18 MR. HARDING: Who is?

19 MR. KURLAND: Welsh.

20 MR. HARDING: Welsh is testifying today.

21 THE COURT: Who is Welsh? Welsh is the detective?

22 MR. HARDING: Yes.

23 THE COURT: But we're not going to get into the Lee
24 shooting?

25 MR. HARDING: We certainly are getting into his

1 recovery of the ballistics evidence. Mr. --

2 MR. KURLAND: Kurland.

3 MR. HARDING: -- Kurland is concerned about this
4 telephone call, which is something Benson is going to testify
5 about.

6 THE COURT: Oh, I see. I see. So Welsh is not the
7 witness on the phone call? So we're not going to get into it
8 today.

9 MR. KURLAND: Your Honor, I think, and again,
10 obviously, Detective Benson who knows the answer for sure. But
11 it's my understanding, imperfect as it is, that the third person
12 who was with Lee and the other person who got shot, the one that
13 ran away, it's my understanding that it's that third person that
14 then calls County Sports. And again, that's, the government has
15 candidly said that they can't prove this beyond a reasonable
16 doubt but they want to kind of throw it against the wall, so to
17 speak, to kind of, for, I guess to use evidence that they can't
18 prove beyond a reasonable doubt, which is, you know, a little bit
19 dicey, to essentially try to glob it on, I would argue
20 impermissibly or certainly unfairly prejudicially.

21 But the person, I would have a different argument if
22 the government's evidence was that one of the defendants was
23 going to, made a phone call. It's my imperfect understanding,
24 and maybe somebody can correct me if they know for sure, but it's
25 my recollection that the telephone call was made by this third

1 person that calls County Sports. And again --

2 THE COURT: Okay. So let me see if I can reconstruct
3 this from yesterday.

4 MR. KURLAND: I hope I'm right. I hope I'm not wasting
5 the Court's time by making assertions that are not factual.

6 THE COURT: I guess we should wait for Benson.

7 MR. KURLAND: Your Honor, the last point is that --

8 THE COURT: Where is Agent Benson?

9 MR. HARDING: Picking up a witness, Your Honor.

10 THE COURT: So he's not in the courthouse?

11 MR. HARDING: Unless he just got here.

12 MR. HANLON: No.

13 THE COURT: All right.

14 MR. KURLAND: But Judge, I do have trouble with the
15 government now sort of injecting for the first time very clearly
16 that they want to prove this as a separate racketeering act.
17 That is not how it's been represented for the two and a half or
18 three years. This was originally represented, or for a long
19 time, as ballistics evidence to prove, essentially, where the
20 guns were.

21 The government now --

22 THE COURT: That's what I understood from yesterday.

23 MR. KURLAND: But that's not what they're now saying.
24 And I want to renew the motion, then, to keep it out, any of the
25 other evidence, other than the fact -- because if they're going

1 to get into now, well, you know, Lee, was found at Lee's house
2 was drugs, you know, this third person, whatever they think, the
3 Goose, so on, so forth, Goose, Card, Purple, I mean, round up the
4 usual suspects, whatever, but the whole point is this is going
5 off into something that should have been articulated much earlier
6 as an additional racketeering act, as opposed to simply trying to
7 prove a connection of guns that hook up two murders that are
8 charged as racketeering acts.

9 THE COURT: Do you understand the government to say or
10 assert that Goose was a member of the racketeering conspiracy?

11 MR. KURLAND: Well, I'd have to go back and look at
12 their chart that I'm going to hope is here in closing argument.
13 But the government has never, has never articulated, even when
14 they showed their chart to the jury during opening statement,
15 they've never articulated what, what that chart means and who is
16 a member of the conspiracy.

17 They apparently have people that kill, that get killed.
18 When it's to their convenience, they put them into the
19 conspiracy.

20 I mean, all we know from Goose right now is that
21 Montgomery's testimony was that there was a plan to kill Goose.

22 THE COURT: Right.

23 MR. HARDING: Now, to me that wouldn't put him in any
24 conspiracy.

25 THE COURT: Well, that's not true.

1 MR. KURLAND: I understand that. But that's, to me it
2 wouldn't.

3 THE COURT: All right. Benson will permit Mr. Harding
4 to speak more knowledgeably about this cell, this telephone call
5 and I'll hear it. But right now it does sound extraneous to me
6 and not like something that I'm going to admit. But I'll hear
7 from Mr. Harding once he has a chance.

8 MR. KURLAND: Okay. Is Benson, because how I cross
9 examine Welsh has some bearing on --

10 THE COURT: Sure.

11 MR. KURLAND: Thank you, Judge.

12 THE COURT: All right.

13 MR. HARDING: Judge, we never resolved, I think there
14 are several issues that aren't resolved. But one of them is the
15 issue of this juror and the witness for Mr. Mitchell, who you had
16 asked a long time ago for Ms. Rhodes and Mr. Lawlor to prepare a
17 statement of what the witness would have testified to.

18 THE COURT: Right. And I still haven't received that
19 and I think I've been reasonably clear, although not as explicit
20 as you would have liked me to be, Mr. Harding. But I think Ms.
21 Rhodes, and of course she stepped out to take care of a personal
22 matter, but I've been pretty clear that this witness is not going
23 to be permitted to testify in front of this jury.

24 MR. HARDING: Okay. Thank you, Your Honor.

25 THE COURT: And I'll make that explicit at the

1 appropriate time. Mr. Flannery.

2 MR. FLANNERY: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. FLANNERY: I think we also had another issue that I
5 think we were expecting an answer from Mr. Harding, regarding Ms.
6 Shannon Harris and the foundation for her understanding as to Mr.
7 Harris's drug dealing.

8 THE COURT: Right. We wanted to clarify that this
9 morning, Mr. Harding.

10 MR. HARDING: Yes. Ms. Harris says that she knows that
11 her brother was into drug dealing because he used to get arrested
12 for it. But I'm not going to go into any testimony about that.
13 What I'm going to ask her to testify about, though, is that he
14 used to hang out on Woodland Avenue, and I'm going to show her a
15 couple of pictures of Woodland Avenue where he used to hang out.

16 THE COURT: Okay. So Mr. Flannery, the witness is not
17 going to be asked to testify to her knowledge about Mr. Harris's
18 drug dealing activities, but she clearly is competent to testify
19 as to where he hung out.

20 MR. FLANNERY: Assuming she has, you know, a foundation
21 for that as well.

22 THE COURT: It's within the personal knowledge of
23 family members as to where their family members work and go to
24 school and hang out.

25 MR. FLANNERY: I'm one of six, Your Honor. I don't

1 know. Sometimes I disagree with that.

2 THE COURT: You're number one or number six?

3 MR. FLANNERY: I'm number three, Your Honor.

4 THE COURT: Right in the middle.

5 MR. FLANNERY: Not all the stereotypes that go with
6 that.

7 MR. COBURN: Your Honor, I would not be delaying the
8 jury if I raised another issue?

9 THE COURT: Not at all. I'm hoping that people will
10 think of things we need to take care of while we're waiting for
11 the jury.

12 MR. COBURN: Appreciate the opportunity. Going back to
13 the Montgomery cross examination.

14 THE COURT: Do we have to?

15 MR. COBURN: I understand exactly where Your Honor's
16 coming from when you say that. Your Honor will remember there
17 was a kind of a back and forth between, I guess you could sort of
18 say Mr. Harding and me through the witness, in terms of other
19 proffer sessions. In other words, there were like nine of them.
20 And then there was redirect to the effect that, well, there were
21 other ones when he made some statements that weren't reflected in
22 the ones that we had.

23 I just wanted to let Your Honor know that, I mean, from
24 my point of view, and I realize, you know, that Mr. Harding's,
25 this is an important witness for him just like it is for us and

1 so on and so forth.

2 I had sent an e-mail asking for the handwritten notes
3 of those other proffer sessions and I haven't heard back on that
4 yet. There's a Jencks issue there.

5 You know, the government may contend the notes aren't
6 Jencks, in which case --

7 THE COURT: I think that's exactly what the government
8 contends.

9 MR. COBURN: I think they probably will, too. In which
10 case my request is that the Court do an in -- I hope there
11 aren't too many of them⁰, for the Court to do an in camera
12 inspection of the notes and see whether any of them appear to be
13 substantially verbatim.

14 Because it is kind, at least we think it's an important
15 issue from our point of view in terms of these things that
16 weren't in the proffer sessions that we had were, in fact, said
17 in other ones that we didn't have any record of.

18 THE COURT: I'm going to deny that request, Mr. --
19 first let me hear from Mr. Harding. I thought they did respond
20 to that. But perhaps --

21 MR. COBURN: I may have just missed it.

22 THE COURT: Do you recall what he's referring to, Mr.
23 Harding?

24 MR. HARDING: I do recall the e-mail, Your Honor, and I
25 don't believe I responded to it. It's because, I think it's

1 because I can't recall ever, anybody ever having asked me in the
2 past for my handwritten notes of proffer sessions. And so I
3 guess I considered it --

4 THE COURT: I'm sorry. I thought he was talking about
5 agent notes.

6 MR. HARDING: No.

7 THE COURT: He's not talking about your notes.

8 MR. HARDING: No, I think he specifically asked for my
9 notes.

10 MR. COBURN: No, I didn't. Actually, I don't mean
11 to --

12 THE COURT: No. You're not asking for prosecutor's
13 notes?

14 MR. COBURN: Well, I guess the question would be like
15 if that's all there is. If Mr. Harding is saying this is like a
16 one-on-one thing between him and Montgomery, then, you know, I
17 guess prosecutor's notes, if I remember correctly from, you know,
18 back in the day when I was doing that, I think they could be
19 considered Jencks. But I don't really want to go there, assuming
20 there are agent notes, which I'm just assuming there probably
21 are, because I don't think Mr. Harding is sitting down with Mr.
22 Montgomery by himself.

23 THE COURT: Well, we know Mr. Harding's not going to be
24 in a room by himself with Mr. Montgomery.

25 MR. COBURN: That's what I figured.

1 THE COURT: But can you say anything about agent notes,
2 Mr. Harding? See, I believe there's a presumption that I should
3 indulge that Mr. Harding has turned over everything.

4 MR. HARDING: Yes. Your Honor, the agents, I have no
5 Jencks material at all relating to my agents that hasn't been
6 turned over. And my agents who sat in on the proffers with
7 Montgomery did on occasion take notes about things. But there is
8 no Giglio or Brady material in that.

9 In fact, we had a discussion about that very recently.
10 And they all reviewed their notes to make sure of it. And none
11 of it's Jencks. None of these agents are going to be asked
12 anything about Montgomery. So that's the government's position.

13 THE COURT: Okay. I think that sweeps the deck clean
14 on that issue, Mr. Coburn. Mr. Crowe, good morning.

15 MR. CROWE: Yes, Your Honor. As long as we're waiting
16 for the jury, I have a matter closely related to the one which
17 Mr. Coburn raised.

18 We did receive from the government shortly before Mr.
19 Montgomery's testimony memoranda on five proffer sessions. These
20 were proffer sessions which were not tape recorded. I have asked
21 the government, the memos that were received do not have an
22 apparent author and I believe, and I have asked the government if
23 they can tell us who wrote the memoranda, which seems like a
24 pretty reasonable request.

25 And I think it's further reasonable because certainly

1 some of the notes of the proffer session appear to have passages
2 which seem to contradict Mr. Montgomery.

3 There is in particular one passage where it appears
4 that Mr. Montgomery is depicted as saying that he had actually
5 gone around and followed Darius Spence on the street, gone into
6 bars, talked to women that he associated with, and things of that
7 nature.

8 Probably more important, however, is --

9 THE COURT: I'm sorry. You regard that as
10 contradictory?

11 MR. CROWE: Yes, because Mr. Spence said that he didn't
12 do that. All that he did was -- I mean, Mr. Montgomery said that
13 he did not surveil him on the street. All that they did was go
14 to the house.

15 THE COURT: Well, I'm sorry. I don't see that as
16 contradictory.

17 MR. CROWE: Well, I asked him the question --

18 THE COURT: If you know a person frequents a particular
19 bar and you take up a position to sort of pay attention to
20 whether it's true that he frequents that bar and so you see him
21 at that bar two or three or four times, I mean, is that
22 surveilling a person on the street?

23 MR. CROWE: This went a little farther than that.
24 Obviously, I don't have the notes in front of me. But my
25 recollection is that he would, he would go, he would go to haunts

1 where, where he knew that Spence frequented, that he would talk
2 with women that he associated with, that the women would tell him
3 about Spence's activities and things of that nature.

4 Obviously, to the extent that he's out there doing that
5 sort of work, which he testified on the stand he did not do,
6 because I asked him the question specifically, yeah, I think
7 it's, I think it's a prior inconsistent statement.

8 THE COURT: I'm not persuaded that it means very much.
9 The testimony has been very clear that Mr. Montgomery, Mr. Holly,
10 and Mr. Gardner went to considerable effort to track Mr. Spence,
11 inform themselves about his movements, find out where he lives,
12 find out when he comes home, over several weeks. And so if some
13 agent wrote a particular version of that that seems to suggest --
14 Agent Benson's here -- I just don't, I see your point, Mr. Crowe.

15 And certainly, it's passing strange that the government
16 can't identify the author of a memorandum. But unless there's
17 some discrete concern you have about that.

18 MR. CROWE: There is another matter of more importance
19 and that has to do with the September 26th proffer memorandum.
20 As the memorandum was written, apparently a Sergeant Garnell
21 Green from Baltimore City Homicide came in, spoke to an assembled
22 group, which included Mr. Montgomery, laid out for Mr. Montgomery
23 the history of the shootings at 27, on 2700 Laretta Avenue,
24 which is --

25 THE COURT: That's the Epps/Lee?

1 MR. CROWE: -- the Lee/Epps shooting. Told him how
2 those guns tied into other homicides in Baltimore City and
3 Baltimore County. And immediately after that, just one or two
4 paragraphs after that, Mr. Montgomery comes up with the first
5 time for saying, Oh, yeah, Gardner told me that one of the guns
6 that he had was dirty because it had a body on it.

7 And then apparently sometime after that, we don't even
8 have this in writing, he testifies before the grand jury that
9 when my client was talking to him, when they were supposedly
10 planning a bunch of things, my client also said that he had a .40
11 caliber gun with three bodies on it.

12 THE COURT: That he, Mr. Martin, had a .40 caliber gun?

13 MR. CROWE: Yes.

14 THE COURT: Well, he didn't testify to that, did he?

15 MR. CROWE: Yes.

16 THE COURT: Montgomery testified to that?

17 MR. CROWE: Montgomery testified to that.

18 THE COURT: I thought Gardner had the --

19 MR. CROWE: Gardner had a gun with one body on it and
20 Martin supposedly said that he had a gun with three bodies on it.
21 And we believe this all happened after the police very
22 conveniently laid out all the ballistics and the connections.

23 We think, we think this is extraordinarily important.

24 THE COURT: So are you going to call this Officer
25 Green?

1 MR. CROWE: What I would like to do, talk to the guy
2 that wrote the memorandum.

3 THE COURT: Well, wouldn't, is it Officer Green who you
4 say laid all this out that prompted Montgomery's --

5 MR. CROWE: That's what the memorandum says.

6 THE COURT: It seems to me that, forget who wrote the
7 memorandum. It would be Green that you want to talk to.

8 MR. CROWE: Well, I'd probably want to do that. But
9 I'm kind of a belts and suspenders guy. If Green says no, I want
10 the author of the memorandum. Or I may just want the author of
11 the memorandum.

12 THE COURT: Mr. Harding, is it correct that you can't
13 identify the author of these proffer memoranda?

14 MR. HARDING: I contacted several of the agents who
15 were present and learned that they did not prepare the memo.
16 It's not signed, which is very atypical for agent's reports and
17 let me to conclude that it probably wasn't even an official
18 report at all. I turned over five of these before Montgomery
19 testified.

20 THE COURT: And then the other four during trial?

21 MR. HARDING: No. This was all turned over before
22 Montgomery testified.

23 THE COURT: Okay. I thought I heard that there were
24 nine proffer sessions.

25 MR. HARDING: Well, there were some tape recorded --

1 there were also four tape recorded proffer sessions for which I
2 turned over transcripts.

3 THE COURT: I see. So you turned over four or so
4 transcripts and, separately, five or so memoranda?

5 MR. HARDING: Yeah.

6 THE COURT: I get it.

7 MR. HARDING: I still am not certain who prepared those
8 memoranda.

9 THE COURT: Any of them?

10 MR. HARDING: The transcripts are, it's apparent who's
11 talking to Mr. Montgomery in the transcripts.

12 THE COURT: Right. But I'm talking now about the
13 memoranda.

14 MR. HARDING: Yeah. I'm still not certain. However, I
15 got a call from Jim Green, former AUSA, former SAUSA.

16 THE COURT: Yes, I saw Jim the other night.

17 MR. HARDING: He had been contacted by Mr. Pyne,
18 inquiring as to whether he wrote them the. And he told me that
19 he wasn't sure whether he wrote them, either, but he wanted to
20 talk to me about it.

21 THE COURT: Is that the Green you think you referred
22 to, Mr. Crowe? Was it Jim Green, Esquire, or you're sure it was
23 an officer?

24 MR. CROWE: No. I believe it was a Sergeant Garnell
25 Green. I've got, I'll pull the memo out to make sure.

1 THE COURT: Okay. All right. So Mr. Green doesn't
2 know who authored the memoranda?

3 MR. HARDING: No. He wants to look at them and he
4 hasn't had a chance to do so. So he's going to come over and see
5 me tomorrow, as a matter of fact.

6 THE COURT: I see. Okay. So hopefully, he'll be the
7 one who will be able to --

8 MR. HARDING: He doesn't want to testify, Your Honor.

9 THE COURT: Oh, no. Of course he doesn't want to
10 testify. I'm just now focused on who authored the memoranda.

11 MR. HARDING: Yeah. We'll find out.

12 THE COURT: What I mean is will he, will his memory be
13 refreshed sufficiently? Was he at most of the proffer sessions?

14 MR. HARDING: I am not sure, Your Honor. I know he was
15 at several of them. I don't know if he was at all five.

16 THE COURT: Okay. Well, presumably, he's going to be
17 able to look at the memoranda, refresh his recollection, and the
18 transcripts, if that would be helpful, and presumably --

19 MR. HARDING: Yeah. The government's position would,
20 these would be prosecutor's notes if, in fact, Jim Green
21 authenticates them as his. And we would, in fact, the Touhy
22 regulations preclude us from testifying and they apply even to an
23 AUSA who has left the office. That's the --

24 THE COURT: But might they have been prepared by
25 Baltimore County people?

1 MR. HARDING: They might have. But I haven't
2 determined who it could have been. There were all these people
3 present. And I, I have contacted the relevant people and told
4 Mr. Crowe that it didn't appear to be either Detective Giganti or
5 ATF Agent Michael Groth. It's not Michael Coleman, either,
6 another ATF person.

7 THE COURT: Okay. All right. I think my position on
8 Montgomery, and I realize full well that he occupies a uniquely
9 important role in this trial, as I hinted yesterday, my position
10 on Montgomery is that he has been thoroughly, thoroughly,
11 thoroughly, exhaustively, comprehensively impeached.

12 I can't imagine, based on what I've heard so far, that
13 any additional collateral impeachment of Mr. Montgomery, I mean,
14 you could call everybody who attended any one of these proffer
15 sessions with Mr. Montgomery and elicit some contradictions,
16 perhaps. But this jury is either going to credit portions of Mr.
17 Montgomery's testimony or it's not. I just don't see any point
18 in trying to go further to discredit Mr. Montgomery.

19 He's a hit man who would kill anybody in this courtroom
20 for 5,000 bucks. And he was thoroughly impeached on his direct
21 testimony, just by his demeanor and by his record and by his plea
22 agreement and by his answers to counsel's questions. And I just
23 don't see what more coal you can mine from that vein.

24 The jury's either going to credit it because of the
25 corroborating circumstances of the case and the other evidence or

1 the jury's going to say, I'm not willing to convict anybody on
2 the testimony of somebody as soulless as Mr. Montgomery.

3 So that's my perspective on Mr. Montgomery. They're
4 either going to find that he's credible or not based on the
5 totality of the circumstances.

6 But Mr. Crowe, to the extent you want to continue to
7 pursue any of that, I will certainly give a listen.

8 Good morning, Ms. Rhodes.

9 MS. RHODES: Good morning, Your Honor. Thank you.

10 THE COURT: We're still, I think, waiting for the jury.
11 Do you want to check or do they have a signal they're going to
12 give you?

13 THE CLERK: They are ready.

14 THE COURT: They are ready? How long have they been
15 ready?

16 THE CLERK: The last time I went and checked they were
17 ready.

18 THE COURT: All right. So we're ready to proceed.

19 MR. KURLAND: Your Honor, can we get that clarification
20 from Detective Benson?

21 THE COURT: Yes. Mr. Harding, have you had a chance to
22 speak to Agent Benson?

23 MR. HARDING: I was hoping we'd be able to, I haven't
24 had a chance to speak to Detective Benson. Something we ought to
25 have a few minutes at least to talk about. Could we proceed with

1 the witnesses and talk about this later?

2 THE COURT: All right.

3 MR. KURLAND: As long as it's not Welsh.

4 THE COURT: Right. It's not Welsh, right?

5 MR. HARDING: It's not Welsh but this whole issue of
6 the telephone call isn't going to come up with Welsh today at
7 all.

8 THE COURT: But Mr. Kurland may want to bring it up
9 with Welsh.

10 MR. HARDING: Okay. We aren't doing Welsh right now.
11 But we have these women that we're anxious to get out of here.

12 THE COURT: Okay. When is Welsh coming in?

13 MR. HARDING: He's here, he's waiting, but he's like
14 sixth in line.

15 THE COURT: Can you just have a 30 second conference
16 with Agent Benson? It can't be that complicated.

17 (Pause in proceedings.)

18 THE COURT: Mr. Coburn, could you approach the lectern,
19 please?

20 MR. COBURN: Absolutely, Your Honor. Did I do
21 something wrong?

22 THE COURT: No. Not at all. Not at all. I thought
23 while we're waiting for Mr. Harding, I think this is Mr. Hanlon's
24 issue, have you thought about the whole Massiah issue overnight?
25 Is there anything more on that with regard to Reynolds?

1 MR. COBURN: I do think it's a significant issue,
2 having, having thought further about Mr. Harding's proffer about
3 kind of the sequence of events with Mr. Reynolds, the fact that
4 apparently Mr. Reynolds, Reynolds had already been in. I don't
5 know if there was any sort of a formal proffer agreement or what
6 exactly existed. But he'd already been in talking to them
7 before, I gather, they're saying this conversation occurred.

8 THE COURT: But simply because he was cooperating, of
9 course, and simply because they were cell mates doesn't, doesn't
10 mean there was a Massiah violation.

11 Indeed, Mr. Harding's proffer yesterday seemed pretty
12 clear to me that what Mr. Harding said was that he wrote to Andy
13 Graham because he was surprised that they were cell mates. So
14 that would certainly negative any suggestion to my mind that the
15 government purposely sought to have Mr. Reynolds elicit any
16 comments or statements from Mr. Gardner.

17 MR. COBURN: Well, I don't, I don't think for a minute
18 that Mr. Harding, you know, told, sort of sent him in there as a
19 drone in order to do this.

20 THE COURT: Okay. But that would be the Massiah -- I
21 mean, that's the linchpin of Massiah.

22 MR. COBURN: I'm not sure about that, Your Honor.
23 Maybe that's just because I haven't had a chance to sit down and,
24 you know, kind of thoroughly research the Massiah issue as I
25 thought or as I would like to.

1 But, you know, let's say, for example, you have a
2 situation in which there's a lot more ambiguity than that.
3 There's a conversation between Mr. Harding or people in Mr.
4 Harding's office and Mr. Reynolds. And I guess, I'm not sure if
5 Mr. Graham's in it or if the Public Defender's in it at that
6 point or precisely whose in the room. But I mean, Mr. Reynolds
7 walks out of there thinking, I'm playing on their team now, I've
8 got a chance to help myself out. You know, I'm going to do what
9 they want me to do even if he hasn't been explicitly instructed
10 to do it.

11 THE COURT: I see.

12 MR. COBURN: So I think under those circumstances, if
13 the government has a relationship with him, that could raise a
14 Massiah issue.

15 THE COURT: All right. I think the way, we're not
16 going to get to Reynolds this week, today, meaning today. We may
17 need to just voir dire Mr. Reynolds because, frankly, I'm very
18 much inclined to admit the testimony and to give a strong
19 limiting instruction and to caution the government as to the
20 manner in which it argues from Mr. Reynolds's testimony. So it
21 may well be that the issue's going to turn on whether there was
22 Massiah, U.S. v. Henry violation.

23 MR. COBURN: Well, I appreciate Your Honor raising it
24 again. I will make sure to research that.

25 THE COURT: On Monday.

1 MR. COBURN: Will do.

2 THE COURT: All right. Mr. Harding.

3 MR. HARDING: Well, the answer to the question is that
4 after the murder, Darnell Dukes, who was one of the four people
5 ordered to hit the ground, called County Sports. And he had also
6 been in touch with County Sports prior to the murder of Eric Lee.

7 THE COURT: So he's the one that ran away?

8 MR. HARDING: Yeah. He's the one who ran away. He
9 actually wound up driving Mr. Epps to the hospital. But I think
10 what --

11 THE COURT: Wait. So he ran away and came back after
12 the shooting?

13 MR. HARDING: Yes.

14 THE COURT: Took Mr. Epps to the hospital?

15 MR. HARDING: Yes.

16 THE COURT: All right. Go ahead.

17 MR. HARDING: I would say that at this point, we don't
18 have, we haven't figured out what the connection.

19 THE COURT: I'm sorry. They left Lee there? Agent
20 Benson is shaking his head.

21 MR. HARDING: Left Lee there, yes. Left Lee, Lee was
22 still there when Welsh showed up. So I think it's fair to say
23 that we haven't figured it out well enough so that we won't
24 elicit testimony about the telephone call.

25 THE COURT: Great. Thank you very much for clarifying

1 that. Satisfied?

2 MR. KURLAND: I am satisfied. Thank you, Your Honor.

3 THE COURT: All right. We'll have the jury, please.

4 (Jury enters the courtroom.)

5 THE COURT: Ladies and gentlemen, good morning. Thank
6 you again for your patience. We're ready to continue. The
7 government may call its next witness.

8 MR. HARDING: Yes. Thank you, Your Honor. Your Honor,
9 the United States calls Shannon Harris.

10 THE COURT: Ms. Harris, if you would stand, please, and
11 direct your attention to the clerk.

12 SHANNON HARRIS, GOVERNMENT'S WITNESS, SWORN

13 THE WITNESS: Yes, I do.

14 THE CLERK: Be seated. Speak directly toward the mike.
15 State your name and spell it for the record, please.

16 THE WITNESS: Shannon Harris. S-H-A-N-N-O-N.
17 H-A-R-R-I-S.

18 DIRECT EXAMINATION

19 BY MR. HARDING:

20 Q Good morning, Ms. Harris.

21 A Good morning.

22 Q Can you tell us how old you are, please?

23 A I'm 24.

24 Q Ms. Harris, are you working right now?

25 A Yes.

1 Q And are you working to get your GED right now?

2 A Yes.

3 Q Have you ever been convicted of a crime?

4 A No.

5 Q And you don't use drugs, do you, Ms. Harris?

6 A No.

7 Q Okay. Are you related to Shelton Harris?

8 A Yes.

9 Q How are you related?

10 A That's my brother.

11 Q Okay. Is he your older brother or your younger brother?

12 A My older brother.

13 Q Did you grow up in the Park Heights area of town, Ms.
14 Harris?

15 A Yes.

16 Q Let me show you Government Exhibit P-17. Can you tell us
17 what this is, Ms. Harris?

18 A 3517 Lucille Avenue, my old address.

19 Q I'm sorry? I missed the address.

20 A 3517 Lucille Avenue.

21 Q Lucille Avenue?

22 A Yes.

23 Q Okay. Did you live in that house?

24 A Yes.

25 Q With your family?

1 A Yes.

2 Q Who were you living with when you were living in that house?

3 A It was me, my brother, my younger sister, and my mother.

4 Q Okay. What's your younger sister's name?

5 A Sharmika.

6 Q What's your mother's name?

7 A Arlene Williams.

8 Q Did there come -- well, let me ask you first. When you were
9 living on Lucille, did Mr. Harris used to hang out on Woodland
10 Avenue?

11 A Yes.

12 Q Let me show you a couple more pictures. PH-18. Do you
13 recognize what that is?

14 A Yes.

15 Q What is it?

16 A Woodland Avenue.

17 Q What's this street down here where it looks like you can see
18 some, a traffic light and some store fronts?

19 A Reisterstown Road.

20 Q Okay. And this is Government Exhibit PH-19. Is that the
21 same area, a little closer to Reisterstown?

22 A Yes.

23 Q Okay. And you say that your brother used to hang out on
24 that strip on Woodland Avenue, is that correct?

25 A Yes.

1 Q Do you remember about when it was that you moved to Amity
2 Street?

3 A I think it was in 2008. I mean -- sorry. 1998.

4 Q Okay. Let me show you PH-48, Ms. Harris.

5 A Okay.

6 Q Can you tell us what that shows?

7 A My old address, 205 North Amity Street.

8 Q Okay. Now, when you moved there in 1998, how long did you
9 live there for?

10 A Five years.

11 Q Okay. And was it the same group of people living there that
12 you named before? Your little sister, your mother, and Shelton?

13 A Yes.

14 Q Okay. Which room was Shelton's room?

15 A When you come up the steps, his room was the first room to
16 the right.

17 Q Okay. Would that be in the front or the back?

18 A In the front, yeah.

19 Q Okay. So it was like on the second floor of the apartment,
20 is that right?

21 A Yes.

22 Q Do you remember, did, was there ever a problem when your
23 mother discovered a gun in Shelton's room?

24 A Yes.

25 Q Did you see that gun?

1 A Yes.

2 Q Can you describe it?

3 A It was a silver gun with a brown handle.

4 Q Was your mother happy about that?

5 A No.

6 MR. FLANNERY: Objection, Your Honor.

7 THE COURT: Overruled.

8 Q Did you know a guy by the name of Bo?

9 A Yes.

10 Q Do you see him in the courtroom here today?

11 A Yes.

12 Q Could you point him out to us, please?

13 A He's right there, on the right hand side.

14 Q How far from, how many people away from me is he?

15 A The second person.

16 Q Okay. Can the record reflect that the witness has
17 identified the defendant, Willie Mitchell, Your Honor?

18 THE COURT: It does.

19 Q Do you know how Shelton and Bo met, Ms. Harris?

20 A My brother was incarcerated at Hickey, I think. He was his
21 mentor.

22 Q Who was his who?

23 A Bo was his mentor.

24 Q Okay. Did they stay friends after, after Shelton got out of
25 Hickey School?

1 A Yeah.

2 Q Okay. Did Bo used to come around there to Amity Street
3 after that?

4 A Just to like pick him up to go to the studio and stuff like
5 that.

6 Q Okay. When you say "to the studio", what would they do at
7 the studio, if you know?

8 A Rap, make raps, music, whatever.

9 Q How often did Bo come around to pick up Shelton?

10 A I don't know. Like not every single day. I don't know how
11 to, to say it. Like not every single day.

12 Q Okay. Did Bo also call the house sometimes?

13 A Yeah.

14 Q Did there come a time when Shelton got into a fight, do you
15 remember, with a knife?

16 A Yeah.

17 Q What happened?

18 A Well, from what I know, they got in a fight --

19 MR. FLANNERY: Objection, Your Honor.

20 THE COURT: What's the basis of your knowledge, Ms.
21 Harris? How do you know what you know?

22 THE WITNESS: From what he told us.

23 THE COURT: Who told you?

24 THE WITNESS: My brother.

25 THE COURT: All right. Overruled. You may proceed.

1 THE WITNESS: They went out to a bar, a club or
2 something, and they got into a fight.

3 BY MR. HARDING:

4 Q And did Shelton get injured in that fight?

5 A Yes, he did.

6 Q How so?

7 A His finger was cut off.

8 Q Do you know how it got cut off?

9 A I'm assuming with a knife.

10 Q Okay. Was it his knife or somebody else's?

11 A I'm not sure.

12 Q Okay. Let me ask you, sometime later after that, were you
13 at home when the police raided your house, 205 North Amity
14 Street?

15 A Yes.

16 Q Who else was there at the time?

17 A It was me, my mom, Shamier, and that was it.

18 Q Okay. Did the police discover drugs there that day, Ms.
19 Harris?

20 A Yeah.

21 Q And where did they discover the drugs?

22 A In my brother's room.

23 Q Okay. Were those your drugs, Ms. Harris?

24 A No.

25 Q Did you know they were there before the police came?

1 A No.

2 Q To your knowledge, were they your mother's drugs?

3 A No.

4 Q Were they Shamier Delvison's drugs?

5 A No.

6 Q Who's Shamier Delvison, anyway?

7 A My brother's ex-girlfriend.

8 Q And she was there at the time, you say?

9 A Yes.

10 Q Even though she was Shelton's ex-girlfriend?

11 A Yeah. We were very close. She was very close to us.

12 Q I see.

13 A As well.

14 Q Very close to you and your mother?

15 A Yes.

16 Q So she was visiting you and your mother?

17 A Yes.

18 Q Okay. I think those are all the questions I have for you
19 today, Ms. Harris. Thank you very much.

20 THE WITNESS: You're welcome.

21 CROSS EXAMINATION

22 BY MR. FLANNERY:

23 Q Good morning, Ms. Harris.

24 A Good morning.

25 Q My name's Paul Flannery and I'm one of the attorneys that

1 represents your brother, Shelton Harris. Ms. Harris, you
2 testified that Shamier Delvison is your brother's ex-girlfriend?

3 A Yes.

4 Q And at some point you were living at 205 North Amity Street?

5 A Yes.

6 Q Okay. And you testified that you moved in there around
7 1998?

8 A Yes.

9 Q And I don't expect you to do all this math in your head, but
10 you said that Shelton Harris is, in fact, your older brother?

11 A Yes.

12 Q And he's about two years older than you?

13 A Yeah.

14 Q So in 1998 when you moved in there, he was around the age of
15 16 or so?

16 A Yeah.

17 Q And you were two years younger?

18 A I was -- yeah.

19 Q Okay. And Ms. Delvison lived at 205 North Amity with you
20 guys for about a year and a half, is that correct?

21 A Yeah.

22 Q Okay. But she wasn't, in fact, living there the day that
23 the police raided your home?

24 A No.

25 Q She was just visiting?

1 A Yes.

2 Q And she visited fairly frequently, is that correct?

3 A Um-hum. Yes.

4 Q Because you and your mother and Ms. Delvison remained very
5 close even after she and Mr. Harris had stopped dating, that's
6 correct?

7 A Yes.

8 Q Okay. And she actually had -- the raid, if you remember,
9 occurred back on June 23rd of 2002?

10 A Yes.

11 Q And she actually had moved out over a year earlier?

12 A Yes.

13 Q Okay. So she was out by maybe the beginning of 2001, does
14 that sound correct?

15 A Yeah.

16 Q Okay. And in fact, at that point she had been dating
17 somebody else?

18 A Yes.

19 Q After she had moved out, she had stopped dating your
20 brother, she had began dating somebody else?

21 A Yes.

22 Q And she was actually dating a gentleman by the name of
23 Michael Taylor?

24 A Yes.

25 Q Okay. You testified that, in fact, you have met Bo?

1 A Yes.

2 Q He was a friend of your brother's?

3 A Yes.

4 Q And your understanding is that they had met when your
5 brother was at the Charles Hickey School?

6 A Yes.

7 Q And in fact, Mr. Mitchell was actually a counselor at the
8 Charles Hickey School at that time; that's him and your brother
9 met?

10 A Yes.

11 Q And your brother referred to Mr. Mitchell, actually, as his
12 mentor?

13 A Yes.

14 Q Or sometimes as his producer?

15 A Um-hum.

16 Q Because they were working on starting a rap label?

17 A Yes.

18 Q And they were working very hard at trying to get that rap
19 label off the ground?

20 A Yes.

21 Q And you testified in this proceeding before in front of the
22 grand jury?

23 A Um-hum.

24 Q And --

25 THE COURT: You have to say yes or no.

1 A I'm sorry. Yes.

2 Q Yes. And in fact, you testified today that Mr. Mitchell
3 came to the house very often, is that correct?

4 A Yes.

5 Q But you're not sure that it was necessarily every day?

6 A Yes.

7 Q But it was quite frequently?

8 A Yes.

9 Q It was almost to the point of maybe on a daily basis, is
10 that correct?

11 A Yeah. Yes.

12 Q But not every single day?

13 A Not every single day, no.

14 Q Fair enough. The relationship between your brother and Bo,
15 they were friends but they also, in a sense, had some business
16 dealings together, is that correct?

17 A I'm not sure about business. What do you mean business?

18 Q What I'm getting at, I guess, is they were friends, but at
19 the same time they were working on a rap label together. That's
20 what you understand?

21 A Yes.

22 Q And he would come to the house to pick up Mr. Harris very
23 often?

24 A Yes.

25 Q Mr. Harris didn't actually have a car?

1 A No.

2 Q Okay. And you understand that they would actually go to the
3 rap studio?

4 A Yes.

5 Q A lot?

6 A Yes.

7 Q To work on creating rap labels?

8 A Yes.

9 Q One second, Your Honor, please. Ms. Harris, when you had
10 moved to Amity and from the time you were living on Amity to the
11 time that you understand that the raid had occurred in 2002, you
12 don't have any knowledge of a Mr. Shelly Wayne Martin?

13 A No.

14 Q And you don't have any knowledge of a Mr. Shawn Gardner?

15 A No.

16 Q That's correct? And you had not heard of Goo?

17 A No.

18 Q Okay. No further questions, Your Honor.

19 THE COURT: Just a moment, Mr. Harding.

20 CROSS EXAMINATION

21 BY MR. COBURN:

22 Q Ms. Harris, good morning.

23 A Good morning.

24 Q Just a follow-up briefly on what Mr. Flannery was just
25 asking you about. Do I understand correctly that before your

1 family lived on North Amity, you lived at a place at 3517 Lucille
2 Avenue?

3 A Yes.

4 Q And how old were you when the Harris's started living there?

5 A At 3517?

6 Q Right.

7 A My mom was living there before I was born.

8 Q So you lived there basically --

9 A My whole twelve years of life.

10 Q -- your whole life until you all moved to North Amity?

11 A Yes.

12 Q And was your brother, your older brother, Mr. Harris, was he
13 living there, too, during that whole time?

14 A Yes.

15 Q And then after you all lived there, you all moved to the
16 Amity Street address, right?

17 A Yes.

18 Q What year was that?

19 A That we moved?

20 Q Right.

21 A 1998.

22 Q And from that time until 2002, your family was living on
23 Amity Street, right?

24 A Yes.

25 Q And your brother was living there as part of the family,

1 right?

2 A Yes.

3 Q So if I understand correctly, you're aware of the fact that
4 your brother, Shelton Harris, was involved in the rap music
5 industry, right?

6 A Yes.

7 Q And he was trying to make CD's, right?

8 A Yes.

9 Q And you understood Bo to be what he described to you as his
10 producer, right?

11 A Yes. Yes.

12 Q And aside from Mr. Harris and Bo, is it correct that the
13 people that you know of who used to rap with them are two twins,
14 Darryl and Dwayne? You don't know their last name?

15 A No.

16 Q And then there was somebody named Slo that they called as a
17 nickname, right?

18 A Yes.

19 Q And nobody else, right?

20 A That I know of.

21 Q And you already told Mr. Flannery you don't know Shawn
22 Gardner, right?

23 A No.

24 Q And you don't know anyone named Goo?

25 A No.

1 Q Thank you so much.

2 A You're welcome.

3 REDIRECT EXAMINATION

4 BY MR. HARDING:

5 Q Just to clarify, Ms. Harris. When your brother got out of
6 jail in 2003, he wasn't living with you any more after that, was
7 he?

8 A No.

9 Q Where did he live then?

10 A I think he lived in Cherry Hill with a friend.

11 Q Did you ever go to his place where he was living in Cherry
12 Hill?

13 A No.

14 Q And do you know how long he lived there for?

15 A No.

16 Q And did he live apart from you and your mother and your
17 little sister at some points in time back when you were living on
18 Amity Street?

19 A No.

20 Q He didn't?

21 A No.

22 Q Okay.

23 A You mean as far as when my mom threw him out for the house
24 raid? Is that what you mean?

25 Q Well, did she do that?

1 A You said when did she do that?

2 Q No. Did she do that?

3 A Yes.

4 Q Did she throw him out?

5 A She asked him to leave.

6 Q Did he leave?

7 A Yes.

8 Q And in fact, did your mother ultimately get evicted because
9 of the house raid?

10 A Yes.

11 Q You say that when Mr. Flannery was questioning you, Mr.
12 Mitchell, Bo, the guy you know as Bo, used to come by very
13 frequently, not necessarily every day?

14 A Not every day.

15 Q But very frequently, and picked up Mr. Harris, is that
16 correct?

17 A Yes.

18 Q By the way, was your mother working at that time?

19 A Yes.

20 Q And so was she necessarily there when Bo came by to pick up
21 Mr. Harris?

22 A No, not all the time.

23 Q You said that they went to the studio, or at least that's
24 what Mr. Harris told you, is that correct?

25 A Yes.

1 Q Did you go to the studio with him?

2 A No.

3 Q Did you ever go to the studio?

4 A No.

5 Q Do you know that they went to the studio from any other way
6 than your brother saying that's where he was going sometimes?

7 A No.

8 Q You said that he also continued to hang out on Woodland
9 Avenue in that period, is that correct?

10 A Yes.

11 MR. FLANNERY: Objection, Your Honor.

12 THE COURT: Overruled.

13 Q So they could have also gone to Woodland Avenue for all you
14 know, is that possible?

15 A I don't know.

16 MR. FLANNERY: Objection, Your Honor.

17 THE COURT: Overruled.

18 MR. HARDING: No further questions, Your Honor.

19 MR. FLANNERY: Briefly, Your Honor, please.

20 THE COURT: Yes, Mr. Flannery.

21 RECROSS EXAMINATION

22 BY MR. FLANNERY:

23 Q Ms. Harris, your mother works mornings to afternoon,
24 correct? She worked at BWI airport?

25 A Yes.

1 Q And she worked like 7 a to 3 p, something to that effect?

2 A Yes.

3 Q Your mother was evicted from 205 North Amity because she was
4 arrested, isn't that correct?

5 A Yes.

6 Q Thank you. No further questions, Your Honor.

7 THE COURT: Thank you, Ms. Harris. You're excused.
8 Next witness.

9 MR. HARDING: Shamier Delvison.

10 SHAMIER DELVISON, GOVERNMENT'S WITNESS, SWORN

11 THE WITNESS: Yes.

12 THE CLERK: Be seated. Speak directly toward the mike.
13 State your name and spell it for the record, please.

14 THE WITNESS: Shamier S-H-A-M-I-E-R. Delvison,
15 D-E-L-V-I-S-O-N.

16 DIRECT EXAMINATION

17 BY MR. HARDING:

18 Q Good morning, Ms. Delvison.

19 A Good morning.

20 Q Can you tell us how old you are, please?

21 A 25.

22 Q Okay. Have you ever been convicted of a crime, Ms.
23 Delvison?

24 A No.

25 Q You don't use drugs, do you, Ms. Delvison?

1 A No.

2 Q How far did you get in school?

3 A Like the eighth grade.

4 Q What school was that?

5 A I don't even remember. Probably Diggs-Johnson. Dickey Hill
6 Middle.

7 Q Dickey Hill Middle School?

8 A Um-hum.

9 THE COURT: You have to say yes or no, Ms. Delvison.

10 THE WITNESS: Yes.

11 BY MR. HARDING:

12 Q Okay. Did you grow up in Baltimore?

13 A Yes.

14 Q Do you know Shelton Harris?

15 A Yes.

16 Q Do you see him here in the courtroom?

17 A Yes.

18 Q Could you point to him, please, and tells us what color
19 shirt he's wearing?

20 A Blue and white striped shirt.

21 Q Can the record reflect, Your Honor, that the witness has
22 identified the defendant, Shelton Harris?

23 THE COURT: So noted.

24 Q What was his nickname?

25 A Little Rock.

1 Q Little Rock?

2 A Yeah. Yes.

3 Q Okay.

4 A Yes.

5 Q Were you involved in a romantic relationship with him?

6 A Yes, I was.

7 Q When did that begin?

8 A January of 1999.

9 Q And did there come a time when you stopped seeing him
10 exclusively?

11 A We had an on and off relationship from '99 all the way to
12 like 2002, 2003.

13 Q Okay. Did you get another boyfriend at some point?

14 A Yes.

15 Q When was that?

16 A Probably like 2001, 2002.

17 Q And what was his name?

18 A Michael Taylor.

19 Q Did you have a child by Michael Taylor?

20 A Yes.

21 Q Okay. For a period of time, did you live at 205 North Amity
22 Street?

23 A Yes.

24 Q Can you tell us what period of time that was?

25 A Probably from 1999 on and off, all the way up until like

1 2001 or 2.

2 Q Okay. Did there come a time when you moved out?

3 A Yeah. Yes.

4 Q Why was that? Why did you move out?

5 A We kept breaking up on and off.

6 Q You and Mr. Harris?

7 A Yes.

8 Q Okay. And when did, when did your son, Michael Taylor's
9 son, get born?

10 A You mean my daughter, DeJanay?

11 Q I'm sorry. Your daughter?

12 A October of 2002.

13 Q Okay. When you were involved with Mr. Harris, was he into
14 rap music?

15 A Yes.

16 Q And did he used to write raps?

17 A Yes.

18 Q Did he go to talent shows?

19 A Yes.

20 Q Did he perform at clubs sometimes?

21 A I don't remember a club, but I remember like a talent show
22 that he went to and performed.

23 Q Where was that?

24 A I don't remember the name of the street it was on. It was
25 like a rec center or something off of Martin Luther King

1 Boulevard.

2 Q And did he, was he featured on some CD's?

3 A What you mean?

4 Q Did he sing on some CD's that you heard?

5 A Yes.

6 Q What, what was the name of his group or his company or
7 whatever?

8 A I'm not sure of the name of the group. But I know it was
9 either Shake Down something or Sheistyville something.

10 Q Okay. Were there other people involved in that group, I
11 assume?

12 A Not that I know of. I know it was other people in the group
13 but I ain't know them personally.

14 Q Did you know a guy named Bo?

15 A Yes. Not personally. I know of him.

16 Q You don't know him personally?

17 A No.

18 Q So you wouldn't be able to recognize him?

19 A Yeah, I'd be able to recognize him. But I don't know him.

20 Q Do you see him here in the courtroom?

21 A Yes.

22 Q Could you point him out?

23 A Sitting right there next to the lady with the yellow marker.

24 Q Okay. May the record reflect that the witness has
25 identified Mr. Willie Mitchell, Your Honor?

1 THE COURT: So noted.

2 Q Okay. Let me show you some pictures. What was Bo's role,
3 if any, in the rap music business that Shelton was involved in?

4 A From what I knew, he was his producer.

5 Q Okay. Did Bo used to come over there to Amity Street when
6 you were living with your brother back early part of 2000 -- when
7 you were living with your boyfriend back in early 2000?

8 A He came over one time when I met him where we gave Shelton a
9 welcome home party, when we came home from the Hickey School.
10 That's about it.

11 Q Okay. Where did Bo meet Shelton, if you know?

12 A I think at the Hickey School, where he was at.

13 Q Okay. How did they meet there, do you know?

14 A No.

15 Q Okay. Do you recognize this photograph, PH-48?

16 A Yes.

17 Q What is it?

18 A A house we used to live at on Amity Street.

19 Q Okay. Did there come a time when that house got raided, Ms.
20 Delvison?

21 A Yes.

22 Q Were you there at the time?

23 A Yes.

24 Q Did the police recover drugs from the apartment?

25 A Yes.

1 Q Where did they recover drugs from?

2 A Upstairs in the front room.

3 Q Were those yours drugs, Ms. Delvison?

4 A No.

5 Q Were those Michael Taylor's drugs?

6 A No.

7 Q Whose room were they recovered from?

8 A Shelton's room.

9 Q Did you ever have possession of drugs, Ms. Delvison?

10 A No.

11 Q Did Shelton come back to the house that day after the
12 search?

13 A Yes.

14 Q And in fact, did you get arrested for a brief time, along
15 with Shelton and Ms. Williams?

16 A Yes.

17 Q Who's Ms. Williams?

18 A Shelton's mother.

19 Q Were you and she released after a short time?

20 A Yes.

21 Q I have some exhibits here that I think I showed to you
22 earlier. One is SE-12. Do you recognize this handwriting, Ms.
23 Delvison?

24 A No.

25 Q Let me, may I approach the witness?

1 THE COURT: Yes.

2 Q I'm putting out SE-12, SE-14, and SE-11. Do you remember me
3 showing you these exhibits earlier?

4 A Yes.

5 Q And did I ask you whose handwriting that was?

6 A Yes.

7 Q And who did you tell me it was?

8 A I told you I wasn't sure.

9 Q All right. I have no further questions, Your Honor.

10 CROSS EXAMINATION

11 BY MR. FLANNERY:

12 Q Good morning, Ms. Delvison.

13 A Good morning.

14 Q My name's Paul Flannery. I represent, I'm one of the
15 attorneys that represents Shelton Harris. Now, Ms. Delvison, I
16 understand this is, we're going back ten years now. So it might
17 be difficult to remember the specifics of all the various dates.
18 But you testified that you met Shelton Harris in the early
19 part -- did you testify it was January, 1998?

20 A No. That was when we started our relationship. I met him
21 December of '98.

22 Q December of '98. Okay. And at some point you started
23 living at 205 North Amity, that's correct?

24 A Yes.

25 Q Okay. And in fact, you started living at North Amity

1 sometime in around, in 1999?

2 A It was January of 1999.

3 Q Okay. And you were on and off between 1999 and 2001, is
4 that correct?

5 A Well, actually, it was on and off up until he got arrested
6 in 2003 or 4.

7 Q But you were living there on and off between 1999 and 2001?

8 A Yeah. 2001 or 2.

9 Q Okay. And you had officially broken up with Mr. Harris, I
10 think you had testified that you had actually broken up in 2000,
11 is that correct?

12 A Yes.

13 Q Okay. And you actually moved out, then, in the beginning of
14 2001. Do you recall that?

15 A Yes.

16 Q Okay. And you testified that you did have an opportunity to
17 meet an individual that you know as Bo?

18 A Yes.

19 Q And you understood him to be Shelton's producer?

20 A Yes.

21 Q Okay. And you understood that they were working on a rap
22 label together?

23 A Yes.

24 Q And that they were trying to promote this rap label?

25 A Yes.

1 Q Okay. When you were involved with Shelton Harris, you had
2 not heard of Shawn Gardner, that's correct?

3 A Yes, that's correct.

4 Q And you didn't, had not heard of Goo?

5 A No.

6 Q Or Shelly Wayne Martin?

7 A No.

8 Q Do you understand that Mr. Harris was often sick when you
9 were residing with him at 205 North Amity?

10 A Yes.

11 Q And in fact, you understood that he had suffered from
12 seizures?

13 A Yes.

14 Q Because you understand Mr. Harris is afflicted with
15 epilepsy?

16 A Yes.

17 Q So he could have seizures at different times and they were
18 really unexpected?

19 A Yes.

20 Q And you understood him actually to stay at home a lot?

21 A Yes.

22 Q Because he was sick?

23 A Yes.

24 Q Fair to say that Mr. Harris did not lavish you with money
25 and gifts?

1 A No, he didn't.

2 Q While you were dating?

3 A That's right. That's correct.

4 Q And when you were at 205 North Amity, you had, you never saw
5 drugs in Mr. Harris's room, that's correct?

6 A That's correct.

7 Q Okay. And you never saw any guns?

8 A Correct.

9 Q I have no further questions, Your Honor.

10 MR. HARDING: Nothing further, Your Honor.

11 THE COURT: Thank you very much, Ms. Delvison.

12 THE WITNESS: You're welcome.

13 THE COURT: You're excused.

14 MR. HARDING: Could we have just a short break, Your
15 Honor?

16 THE COURT: How short?

17 MR. HARDING: Five minutes.

18 THE COURT: How about two?

19 MR. HARDING: Okay.

20 (Pause in Proceedings.)

21 MR. HARDING: Your Honor, the United States calls
22 Arlene Williams.

23 ARLENE WILLIAMS, GOVERNMENT'S WITNESS, SWORN

24 THE WITNESS: Yes.

25 THE CLERK: Be seated. Will you speak directly toward

1 the mike? State your name and spell it for the record, please.

2 THE WITNESS: My name's Arlene Williams. What else I
3 say? I forgot.

4 THE CLERK: Spell it for the record.

5 THE WITNESS: A-R-L-E-N-E.

6 DIRECT EXAMINATION

7 BY MR. HARDING:

8 Q Good morning, Ms. Williams.

9 A Good morning.

10 Q Can you tell us how old you are?

11 A 47.

12 Q How far did you get in school?

13 A Twelfth.

14 Q Okay. Twelfth grade?

15 A Yes.

16 Q You've never been convicted of a crime, have you, Ms.
17 Williams?

18 A No.

19 Q Where did you grow up?

20 A Baltimore City.

21 Q Okay. Did you live for a time in the Park Heights area?

22 A Yes.

23 Q Okay. Let me call your attention to Government Exhibit
24 PH-17, which is going to flash up on that screen there right in
25 front of you. Can you tell us, do you recognize this house?

1 A Yes.

2 Q What is it?

3 A Where I used to live at, I used to live upstairs.

4 Q Okay. Do you remember the address?

5 A 3517 Lucille Avenue.

6 Q Is that in Park Heights?

7 A Yes.

8 Q Okay. Did there come a time when you moved to Amity Street?

9 A Yes.

10 Q And I also want to show you Government Exhibit PH-48. Do
11 you recognize that?

12 A Yes.

13 Q What is it?

14 A I used to live on Amity Street. I used to live at.

15 Q Okay. That's a building. But one of those townhomes in
16 there, I guess you'd call them, or apartments in there is the one
17 you were living in, is that it?

18 A Yes.

19 Q And who were you living with when you lived there on Amity
20 Street?

21 A I was living with my daughters and my son.

22 Q How many daughters do you have?

23 A Two.

24 Q And what's your son's name?

25 A Shelton Harris.

1 Q Okay. Did you have, when you were living there on Amity
2 Street, was there an occasion when you found a gun in Shelton's
3 room?

4 A One day I walked in and I seen one in his room.

5 Q Do you remember what it looked like?

6 A No.

7 Q Were you happy about finding it?

8 A No.

9 Q What did you do?

10 A I was mad.

11 Q Okay. Did you know a guy by the name of Bo?

12 A Yes.

13 Q Who is he?

14 A He was my son producer.

15 Q Your son's producer. And what kind of business were they
16 in?

17 A My son used to sing rap music.

18 Q Okay. Did he used to write raps sometimes?

19 A Yeah.

20 Q Okay. Can I approach the witness, Your Honor?

21 THE COURT: Yes.

22 Q Do these look like some of the raps that your son would
23 write?

24 MR. FLANNERY: Objection, Your Honor, leading.

25 THE COURT: Overruled.

1 THE WITNESS: Yes.

2 MR. KURLAND: I can't hear, Mr. Harding.

3 Q I asked if these looked like some of the raps that your son
4 wrote, Ms. Williams?

5 A Yes.

6 MR. MARTIN: What exhibits?

7 THE COURT: The exhibit numbers, Mr. Harding?

8 BY MR. HARDING:

9 Q These are Exhibit Number S-11, S-14 and S-12. SE-12 and
10 SE-14 and SE-11. Do those all look like raps your son wrote, Ms.
11 Williams?

12 A Yes.

13 Q Showing you SE-10. Do you recognize that?

14 A Um-um.

15 THE COURT: I'm sorry. You have to say yes or --

16 A No.

17 THE COURT: All right.

18 Q Okay. Do you know what "Free Bo" means?

19 A No.

20 Q Or "Free Bo and Weaze?"

21 MR. FLANNERY: Objection, Your Honor.

22 A No.

23 THE COURT: Just a moment. The objection's overruled.
24 The question was, Do you know what Free Bo and Weaze means? The
25 answer was no.

1 BY MR. HARDING:

2 Q Which room in the Amity Street location, that should still
3 be on your screen there, Ms. Williams, which room was Shelton's
4 room?

5 A Shelton, the first room.

6 Q In the front?

7 A Yeah, in the front, yes.

8 Q Would that be on the second floor of the apartment?

9 A Yes.

10 Q Okay. Let me call your attention to June 21st of 2002. Did
11 the police raid your apartment that day?

12 A Yes.

13 Q Okay. Where had you been earlier in the day?

14 A I was working and I got off of work and came home.

15 Q And so who was home when you got home?

16 A Shamier was there and Shannon, my daughter.

17 Q And Shamier is Shamier Delvison?

18 A Yes.

19 Q Was she living there at that time?

20 A No.

21 Q Okay. She had lived there at some --

22 A Yes.

23 Q -- earlier time, is that correct?

24 A Yes. Yes.

25 Q Okay. What about Shelton? Was he home when the police

1 raided the place?

2 A No.

3 Q Did you know that there were drugs in the house at the time?

4 A No. No, I didn't.

5 Q Did the police discover drugs in the house?

6 A Yes.

7 Q Where did they discover drugs?

8 A In Shelton's room.

9 Q Were those your drugs, Ms. Williams?

10 A No. I don't do drugs.

11 Q Were those, did they belong to, as far as you know, to
12 Shannon?

13 A No.

14 Q Or to Shamier?

15 A No.

16 Q Did you, did you unfortunately get evicted from that 205
17 North Amity Street apartment after the raid?

18 A Yes. Because they found drugs in my house so I had to be
19 evicted, because when you live in a low income place you cannot
20 have drugs in there.

21 Q Okay.

22 A Or you'll lose your place.

23 Q Okay. Is it your understanding that you were evicted
24 because there were drugs in the apartment?

25 A No, I was evicted because it was drugs in the house.

1 Q Okay. You were arrested for --

2 A Yes.

3 Q -- a brief time. But you were let go that night, is that
4 correct?

5 A Yes. Yes.

6 Q Okay. How long after the raid did you get evicted?

7 A I got, I mean, I got my house raided. Ever since that, I
8 were living here now, place to place.

9 Q Don't tell us where you're living now but just tell us how
10 long after the raid was it that you got evicted?

11 A How long I got evicted?

12 Q Was it days or weeks or months or what?

13 A It was months.

14 Q Months? Okay. All right.

15 A Yes.

16 Q I think I have no further questions. No further questions,
17 Your Honor.

18 CROSS EXAMINATION

19 BY MR. FLANNERY:

20 Q Hi, Ms. Williams.

21 A How you doing?

22 Q Good. My name's Paul Flannery and I'm one of the attorneys
23 that represents your son.

24 A Yeah.

25 Q Nice to see you.

1 A Nice to see you, too.

2 Q Ms. Williams --

3 A Yeah.

4 Q -- the drugs that were found at 205 North Amity, those
5 weren't your drugs?

6 A No.

7 Q You told the police those weren't your drugs?

8 A Yes.

9 Q But they arrested you, anyway?

10 A Yes, because I was the, you know, head of the household.

11 Q Put the cuffs on you, took you down to Central Booking?

12 A Yes.

13 Q Now, Ms. Williams, at the time of the raid, you were working
14 at BWI Airport?

15 A Yes.

16 Q And you're in kitchen prep or food prep, was it not?

17 A Yes.

18 Q And you worked like 7 a.m. to 3 p.m., something like that?

19 A Yes.

20 Q Okay. How long had you worked there?

21 A For three years.

22 Q Three years from 2002 back?

23 A Yes.

24 Q Okay. Seven a.m., kind of early in the morning to have to
25 be at work, right?

1 A Yes.

2 Q What time do you usually go to bed if you have to be there?

3 A At least about 8:00.

4 Q That's good. Full night's rest, right?

5 A Yes.

6 Q Good. Ms. Williams, you had an opportunity to meet what you
7 understood to be a friend of your son's, a man by the name of Bo?

8 A Yes.

9 Q And you understood him to be his producer?

10 A Yes.

11 Q Producer in the sense that they were trying to create a rap
12 label?

13 A Yes.

14 Q Okay. And your son and Bo working hard at creating that rap
15 label?

16 A Yeah.

17 Q And your son liked to write raps?

18 A Yes.

19 Q One of the things that he liked to do in life, right?

20 A Yes.

21 Q Okay. And you only met Bo, though, two times, that's
22 correct?

23 A Yes. Yes.

24 Q Okay. And Ms. Williams, you do not know a gentleman by the
25 name of Shelly Wayne Martin, that's correct?

1 A No.

2 Q And you do not know a gentleman by the name of Shawn
3 Gardner?

4 A No.

5 Q Those names are unfamiliar to you?

6 A No.

7 Q And the nickname Goo?

8 A No.

9 Q Unfamiliar to you as well?

10 A Um-um.

11 Q Okay. Ms. Williams --

12 A Yeah.

13 Q -- the day of the raid, you mentioned that you were there
14 and your daughter was there and --

15 A And Shamier.

16 Q Right. One of your daughter was there?

17 A Right.

18 Q And Ms. Delvison was there, correct?

19 A Yes.

20 Q Ms. Delvison was visiting you that day?

21 A Yes.

22 Q You remained close after she, in fact, broke up with you
23 your son, is that correct?

24 A Yes, yes.

25 THE COURT: I'm sorry, Ms. Williams. You have to wait

1 until counsel finishes asking the question before you answer.

2 THE WITNESS: Okay.

3 THE COURT: That's fine.

4 BY MR. FLANNERY:

5 Q Sorry, Your Honor.

6 A Sorry. No. No. That happens.

7 Q Ms. Williams, just a couple more questions. At one point
8 you actually were going to school as well as working, isn't that
9 correct?

10 A Yes.

11 Q Okay. And you unfortunately were called away a lot because
12 your son would have seizures sometimes at home and you would have
13 to come home and tend to him?

14 A Yes.

15 Q And your son is afflicted with epilepsy, unfortunately?

16 A Yes.

17 Q And he would have seizures fairly often and fairly
18 unexpected?

19 A Yes.

20 Q Okay. Thank you. I have no further questions. Thank you,
21 Ms. Williams.

22 THE WITNESS: You're welcome.

23 THE COURT: Thank you very much, Ms. Williams. You're
24 excused.

25 MR. HANLON: Your Honor, the United States calls Damita

1 Green.

2 DAMITA GREEN, GOVERNMENT'S WITNESS, SWORN

3 THE WITNESS: Yes.

4 THE CLERK: Be seated. Speak directly forward the
5 make. State your name and spell it for the record, please.

6 THE WITNESS: Damita Green. D-A-M-I-T-A. G-R-E-E-N.

7 DIRECT EXAMINATION

8 BY MR. HANLON:

9 Q Ms. Green, I know you're getting a cup of water poured for
10 you. Let me ask you a couple of basic questions to begin. How
11 old are you?

12 A 28.

13 Q And did you grow up in the Baltimore area?

14 A Yes.

15 Q And what neighborhood did you grow up? I don't need an
16 exact address, but what general area did you grow up in?

17 A Baltimore County.

18 Q And how far did you go in school, Ms. Green?

19 A Twelfth grade.

20 Q Did you graduate from high school?

21 A Yes.

22 Q And about when was that?

23 A 1998.

24 Q Do you know -- well, you and I have spoken before about your
25 appearance today. We've met and went over sort of the questions

1 I would ask you. We've talked a couple of times on the phone.

2 Is that right, Ms. Green?

3 A Yes.

4 Q And you've told me a number of times that you're not at all
5 happy to be here today, is that correct?

6 A No.

7 Q And in fact, you and I had a phone conversation --

8 MS. RHODES: Objection, Your Honor.

9 THE COURT: I guess it's overruled. Why don't you
10 start over, Mr. Hanlon.

11 BY MR. HANLON:

12 Q Sure, Your Honor. I'll just ask you a question, Ms. Green,
13 and if there's an objection, hold on just for a second. You and
14 I had a phone conversation yesterday about making arrangements
15 for you to come in and testify, is that correct?

16 A Yes.

17 Q And you indicated you didn't want to --

18 MS. RHODES: Objection, Your Honor.

19 THE COURT: Overruled. Go ahead, Mr. Hanlon.

20 Q Be fair to say that I essentially have insisted that you
21 come in, is that fair to say?

22 A Yes.

23 MS. RHODES: Objection.

24 THE COURT: Overruled.

25 Q And among, among some of the concerns that you have, Ms.

1 Green, is you've recently given birth to a baby, is that correct?

2 A Yes.

3 Q And you're still on the mend, you're still getting over your
4 birth. There were some complications when you gave birth a few
5 weeks ago, is that right?

6 A Yes.

7 Q I will try to move through this quickly and I do appreciate
8 your being here. Do you know a person named Anthony Wyche?

9 A Yes.

10 Q Or did you ever know a person named Anthony Wyche?

11 THE COURT: I'm sorry, Ms. Green. Can you get a little
12 closer to the microphone, please? Thank you.

13 Q Did you ever know a person named Anthony Wyche?

14 A Yes.

15 Q And how did you know Anthony Wyche?

16 A I went to school with him.

17 Q Showing you what's been marked as Government's Exhibit
18 PH-55. Do you see that on the screen?

19 A Yes.

20 Q And who is this gentleman in this photograph?

21 A Anthony Wyche.

22 Q And did Anthony Wyche have a brother?

23 A Yes.

24 Q Was he Darryl Wyche?

25 A Yes.

1 Q Did you know Darryl?

2 A Yes.

3 Q How did you know him?

4 A From his brother.

5 Q You knew Anthony Wyche better than Darryl Wyche?

6 A Yes.

7 Q Showing you what's been marked as Government's Exhibit
8 PH-56. Who is this gentleman?

9 A Darryl Wyche.

10 Q You're aware or you became aware, Ms. Green, that Anthony
11 Wyche and Darryl Wyche were shot to death in March of 2002, is
12 that right?

13 A Yes.

14 Q Prior to that time, about how long had you known the two
15 brothers?

16 A Maybe six years, seven years.

17 Q What kind of a relationship generally did you have with them
18 as of 2002, March of 2002, just before they died?

19 A Friend, just friends.

20 Q Just friends?

21 A Um-hum.

22 Q About how frequently did you see them at that time?

23 A Not often.

24 Q Once in a while?

25 A Yes.

1 Q Just to socialize?

2 A Yes.

3 Q Sitting here today, Ms. Green, do you remember offhand the
4 date that they were killed?

5 A No.

6 Q Does March of 2002 sound accurate?

7 A Yes.

8 Q You remember finding out about their death, is that right?

9 A Yes.

10 Q And do you remember seeing them and hanging out with, with
11 Darryl Wyche and Anthony Wyche the night before their death,
12 leaving aside the date?

13 A Yeah.

14 Q Do you remember seeing them the night before their death?

15 A Yes.

16 Q Where was it, Ms. Green, that you saw Darryl Wyche and
17 Anthony Wyche the night before their death?

18 A At a friend of mine's house.

19 Q And what was your friend's name?

20 A Brandy.

21 Q Again, without getting into a particular address, what part
22 of town did Brandy live in?

23 A In Baltimore County.

24 Q Was it in the Randallstown section?

25 A Yes.

1 Q And that, that day or that night, about when was it that you
2 saw Darryl and Anthony Wyche at Brandy's house?

3 A I'm not sure of the time, but it was at night.

4 Q It was at night?

5 A Um-hum.

6 Q That's a yes?

7 A Yes.

8 Q And just hanging out that day?

9 A Yes.

10 Q Or that night, I should say. Were there other people with
11 you?

12 A Yes.

13 Q If you remember, or do you remember all of the people that
14 were with you and Darryl Wyche and Anthony Wyche at Brandy's
15 house that night?

16 A No. I just remember Brandy's sister being there.

17 Q You don't remember offhand whether there were other people
18 or anything like that?

19 A No.

20 Q Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 Q Ms. Green, I've handed you a copy of your grand jury
23 testimony in January of 2004. Do you remember appearing in the
24 grand jury?

25 A Yes.

1 Q I'm going to ask you right now, if it's okay, I would like
2 you to turn to Page Five of the grand jury transcript. I'm going
3 to ask you to read something to yourself. I want you to take a
4 look at Line Ten of Page Five of your grand jury transcript.
5 There's a question and answer. Just read it to yourself and tell
6 me when you've had a chance to read that.

7 A I read it.

8 Q Does that refresh your recollection about who was present at
9 Brandy's house that night, the night before the Wyche brothers
10 were killed?

11 A No. I don't remember all those people being there.

12 Q That's fine. You do remember testifying in the grand jury,
13 is that correct?

14 A Yes.

15 Q And you were taken under oath at that time and you swore to
16 tell the truth, is that correct?

17 A Yes.

18 Q And you understood at the time it was important to be as
19 truthful and honest as you could, is that right?

20 A Yes.

21 Q And this was back, your grand jury appearance was in January
22 of 2004 so it was a little bit closer in time than we are today,
23 is that right?

24 A Yes.

25 Q Be fair to say your memory would have been a little fresher

1 when you appeared in the grand jury than it is today, is that
2 right?

3 A Yes.

4 Q I'm going to read this question and answer, the one I just
5 asked you to look at, on Page Five, Line Ten of your January
6 transcript.

7 Question: Okay. Who else was present with you at
8 Brandy's house that night? For the record it's spelled "might"
9 in the transcript. I'm reasonably certain that read "night."
10 Does that sound correct, that that would say "night?"

11 A Yes.

12 Q Who was present with you at Brandy's house that night? Your
13 answer, Ms. Green, me, Brandy, my friend Keisha, I think Brandy's
14 sister was there, and Darryl, Anthony, and Deezo. Have I read
15 the transcript correctly?

16 A Yes.

17 Q Now, moving off the transcript, there was a person you knew
18 at the time named Deezo, is that correct?

19 A Yes.

20 Q And how did you know Deezo?

21 A I didn't really know him.

22 Q You knew him by face? You didn't know him well but you knew
23 his name?

24 A Yes.

25 Q And did you know anything about him or what relationship he

1 had with the Wyche brothers?

2 A No.

3 Q But you just, you recognized him and knew his name, things
4 like that?

5 A Yes.

6 Q Now, during the course of that evening while you were at
7 Brandy's house, Ms. Green, did Mr. Wyche, Darryl Wyche, take a
8 phone call?

9 A Yes.

10 Q Do you remember if Mr. Wyche, Darryl Wyche, received the
11 phone call or if he made the phone call? Do you remember?

12 A He received it.

13 Q And you were present when he received that call?

14 A Yes.

15 Q Were you present for part of the time that Mr. Wyche spoke
16 on the phone?

17 A Yes.

18 Q Was that at Brandy's house?

19 A Yes.

20 Q Were you able to hear Darryl Wyche's half of that cell phone
21 conversation?

22 A Yes.

23 Q At any point during the course of the call, Ms. Green, do
24 you remember if Mr. Wyche used the name of the person he was
25 talking to? Did he address the person on the phone by name?

1 A Yes.

2 Q And what name did Darryl Wyche use during that phone call?

3 MS. RHODES: Objection, Your Honor.

4 THE COURT: The objection's overruled.

5 Q You can answer.

6 THE COURT: You may answer.

7 A Bo.

8 Q How many times did he use the word "Bo" in addressing the
9 person on the other side of the cell phone call?

10 A Just once that I remember.

11 Q Did you hear, during this conversation, did you hear Darryl
12 Wyche ask anything of Bo on the phone?

13 MS. RHODES: Objection, Your Honor.

14 MR. LAWLOR: Your Honor, could we ask the grand jury
15 transcript be removed? It appears the witness is reading from
16 that rather than testifying from memory.

17 THE COURT: You can fold that up. You can leave it in
18 front of you but you can close that up. All right. The
19 objection's overruled. Do you remember the last question?

20 THE WITNESS: No.

21 THE COURT: Okay. Go ahead, Mr. Hanlon.

22 BY MR. HANLON:

23 Q I'll give you the question again, Ms. Green. During the
24 time that you overheard this cell phone conversation between
25 Darryl Wyche and Bo, did you hear Mr. Wyche ask anything of Bo or

1 ask Bo any questions?

2 A I don't remember.

3 MS. RHODES: Standing objection to this.

4 THE COURT: The objection's overruled. The answer was
5 "I don't remember."

6 Q You do not remember that?

7 A No.

8 Q Now, I'm going to ask you at this point to open up your
9 grand jury transcript again. And I'm going to turn you to a
10 particular page. And give me a moment. Page Seven of your grand
11 jury transcript. And I want you to take a look, if you would,
12 Ms. Green, at Line 15 of Page 7 of your transcript. There's a
13 question and answer. Read it to yourself and let me know when
14 you're done.

15 A Okay.

16 Q Have you had a chance to read that part of your transcript?

17 A Yes.

18 Q And does it refresh your recollection about whether Mr.
19 Wyche asked Bo any questions over that cell phone call?

20 A No.

21 Q Understood. I'm going to read the question and answer from
22 Page 7, Line 15 of your January sworn grand jury transcript, Ms.
23 Green. Read along with me to yourself and tell me if I get
24 anything wrong.

25 Question: Okay. After the conversation on the

1 telephone with Bo -- let me ask you one other question. Do you
2 remember anything else that Darryl said during the conversation
3 that he was having? Your answer: All he said was, are you
4 trying to get, are you still trying to get that?

5 Did I read your transcript, your testimony accurately?

6 A Yes.

7 MR. LAWLOR: Your Honor, could I have a limiting
8 instruction, please, as to that testimony?

9 THE COURT: Ms. Green, you said reading the transcript
10 does not refresh your recollection. Is that what you're saying?

11 THE WITNESS: Yes.

12 THE COURT: Now, you're acknowledging that that's how
13 you testified before the grand jury?

14 THE WITNESS: Yes.

15 THE COURT: But as you sit here today, you don't
16 remember whether what you said then is true?

17 THE WITNESS: It was a long time ago.

18 THE COURT: Okay. But my question is, do you remember
19 whether what you said in the grand jury was true?

20 THE WITNESS: I wouldn't have lied.

21 THE COURT: You wouldn't have lied. Okay. But reading
22 the transcript doesn't refresh your recollection about the event
23 back in 2002?

24 THE WITNESS: No. Not that night.

25 THE COURT: Okay. Is there a particular reason you

1 can't remember it?

2 THE WITNESS: No. It just was a long time ago. It's
3 been a long time.

4 THE COURT: Okay. So if reading the transcript doesn't
5 help you remember, I guess nothing would help you remember? In
6 others words, your memory of this event is just totally wiped
7 out? I mean, if it is, it is.

8 THE WITNESS: I remember testifying to it on the grand
9 jury.

10 THE COURT: Right.

11 THE WITNESS: I just --

12 THE COURT: But you don't remember the actual event?

13 THE WITNESS: I remember him taking the phone call. I
14 just don't remember everything that was said on the call.

15 THE COURT: Okay. All right. All right.

16 The grand jury testimony of this witness, ladies and
17 gentlemen, may not be considered by you as the actual substantive
18 testimony for purposes of this trial. Mr. Hanlon has attempted,
19 and you just heard me question the witness to see whether the
20 witness has a recollection of this part of the phone call about
21 which she's testifying. But you may not consider the grand jury
22 testimony as substantive evidence. It was only introduced for
23 the purpose of trying to help the witness recall the actual
24 event. Go ahead, Mr. Hanlon.

25 MR. HANLON: Your Honor, actually, may the government

1 be heard on that or may I at least --

2 THE COURT: Yeah, I'll probably change it, but go
3 ahead.

4 MR. HANLON: So I should continue with the witness?

5 THE COURT: Yes. Oh, yes.

6 BY MR. HANLON:

7 Q Do you recollect after the call happened -- and again, I'm
8 asking you, don't look at your grand jury transcript until I tell
9 you to, Ms. Green -- after the phone call happened, Ms. Green, do
10 you remember how Mr. Wyche, how Darryl Wyche seemed after the
11 call? Did he seem happy, sad? Anything at all about his state
12 of mind?

13 A I remember that night he was in a good mood.

14 Q Was he in a good mood the whole evening or was he in a
15 better mood after the phone call ended with Bo?

16 A We had been all laughing the whole night. But he was in a
17 good mood when he hung up as well.

18 Q And after the phone call ended, did you see Darryl Wyche
19 make arrangements to do anything or go any place?

20 A No. Well, they, he left after, a little while after he got
21 off the phone.

22 Q About how long after he got off the phone did he leave?

23 A I can't remember.

24 Q Was it about 20 minutes?

25 A Yes. Maybe 20. It wasn't an hour, so --

1 Q And do you remember, did you see Darryl Wyche leave with
2 anyone else?

3 A Yes.

4 Q Who did he leave with?

5 A I remember him leaving with his brother.

6 Q His brother was Anthony Wyche?

7 A Anthony Wyche.

8 Q And everybody knew him as Pete, is that right?

9 A Yes.

10 Q Do you remember seeing the Wyche brothers have any
11 discussion about who was going to drive or anything like that?

12 A His brother said he would drive.

13 Q Do you remember if Anthony Wyche, also known as Pete, seemed
14 happy or unhappy to be driving?

15 A He really didn't feel like driving but, you know what I
16 mean, he said he would drive.

17 Q And it was late at night when they left, is that right?

18 A Yes.

19 Q And sitting here today, do you remember if it was just the
20 brothers who left or if they left with anyone else?

21 A I just remembered them leaving.

22 Q You never spoke to either Anthony Wyche or Darryl Wyche
23 again, is that correct?

24 A No.

25 Q And the next day you heard about the fact that they'd been

1 shot, is that correct?

2 A Yes.

3 Q Do you have any concerns about testifying here today, Ms.
4 Green, aside from what you --

5 MR. LAWLOR: Objection.

6 THE COURT: You can finish the question.

7 Q Do you have any concerns about testifying here today or
8 about remembering the things you've talked about or that I've
9 asked you about?

10 MS. RHODES: Objection.

11 Q Aside from what you previously testified to? And hold on.

12 THE COURT: Overruled. You may answer.

13 A Can you repeat question?

14 Q Yes, ma'am. Do you have any concerns about testifying here
15 today or about remembering the things I've asked you about apart
16 from what you and I have already discussed, the fact that you're
17 on the mend from having a baby and things like that?

18 MS. RHODES: Objection.

19 THE COURT: Overruled. You may answer.

20 A I didn't want to testify. But I don't have any concerns
21 about remembering anything.

22 Q Why did you not want to testify?

23 MS. RHODES: Objection.

24 THE COURT: Overruled. You may answer.

25 A Out of fear.

1 Q Your Honor, I believe I've concluded my testimony with the
2 witness. The issue now is, I think, the treatment of the grand
3 jury transcript. I don't know if the Court would like to be
4 heard, if the government may be heard on that point.

5 THE COURT: Well, what's your theory, Mr. Hanlon?

6 MR. HANLON: Past recollection recorded, Your Honor.

7 THE COURT: No. That's not past recollection recorded.
8 All right. You may cross examine.

9 MR. HANLON: Well, Your Honor, may I give one other
10 theory?

11 THE COURT: Yes.

12 MR. HANLON: Prior inconsistent statements, sworn.

13 THE COURT: It's not inconsistent. It's not
14 inconsistent. She says she does not remember. It doesn't
15 refresh her recollection. A failure of recollection is not an
16 inconsistent statement.

17 MR. HANLON: But it's also not a past recollection
18 recorded, Your Honor?

19 THE COURT: And it's not a past recollection recorded.

20 MR. HANLON: May I brief this subject, Your Honor?

21 THE COURT: No. No. No. Let's move on.

22 CROSS EXAMINATION

23 BY MS. RHODES:

24 Q Hi, Ms. Green. I have some questions for you. First of
25 all, congratulations on your new baby.

1 A Thank you.

2 Q You testified, you said you recall testifying in front of
3 the grand jury, right?

4 A Yes.

5 Q And that date was around, in January of 2004. Does that
6 sound right?

7 A Yes.

8 Q Okay. And then do you also remember an interview with the
9 police shortly after the homicides?

10 A Yes.

11 Q Okay. And that was around the 28th day of March, in 2002?

12 A Yes.

13 Q Okay. Well, does it sound right that it was within, say, a
14 week after the homicides?

15 A Yes.

16 Q Okay. So at that point certainly your memory would have
17 been even more fresh than it was at the grand jury, right?

18 A Yes.

19 Q Okay. And do you remember in that interview who you, that
20 you spoke to Detective Niedermeier, he was one of the people
21 there?

22 A Yes.

23 Q And another officer was there, too?

24 A Yes.

25 Q Okay. Now, in terms of the time, again, going back to the

1 interview in March of 2002, when everything was much more fresh,
2 do you remember that the, you told them that the call came in
3 that they were asking you about around 11:40 p.m.?

4 A I don't remember the time the call came in.

5 Q Okay. Do you -- but if you told them that, that would have
6 been the truth then, right?

7 A Yes.

8 Q Okay. And do you recall, you don't recall saying that it
9 was around 11:40 or do you recall that?

10 A I don't recall.

11 Q Okay. Do you recall telling them that they left maybe half
12 an hour later?

13 A Yes.

14 Q Okay. And do you recall telling them that Deezo, that the
15 three all left together, Deezo with the brothers?

16 A No, I don't recall that.

17 Q Okay. Now, looking at these phone calls, they asked you
18 about one call in particular, right?

19 A Yes.

20 Q Okay. They weren't asking you about every single call he
21 got or he made that evening, right?

22 A No.

23 Q Okay. And if they had, you would have been able to give
24 them a little more information about other calls he had gotten,
25 right?

1 A Yes.

2 Q Okay. Now, I know it's long time ago, but do you remember
3 how many times you talked, you got a call or made a call to
4 Darryl that day?

5 A No.

6 Q Would it, would it have been around ten times, do you think,
7 back and forth?

8 A No. I don't, I don't recall. But I don't remember talking
9 to him ten times that day.

10 Q How many times would you say you spoke to him that day?

11 A Maybe twice, two or three times. He was calling me, looking
12 for his cousin.

13 Q His cousin being who?

14 A Keisha.

15 Q Okay. And when he called you those times, were you at
16 Brandy's house?

17 A I don't recall. I wasn't at Brandy's house the whole day
18 so --

19 Q Okay. Do you remember when you got there to her house?

20 A No.

21 Q You remember telling the police that you had, that Darryl
22 had come over to the house, to Brandy's house, several times that
23 day, like three times?

24 A Yes.

25 Q Okay. And I gather -- and that Pete had been there

1 basically all day, I mean Anthony Wyche had been there basically
2 all day?

3 A Yes.

4 Q But Darryl wasn't there all day but several times?

5 A Yes, he wasn't there all day.

6 Q Okay. And the last time he came back was when he came back
7 with Deezo?

8 A Yes.

9 Q Okay. And then he had been there earlier and then left to
10 go get his daughter, is that right?

11 A I don't recall.

12 Q Do you remember him having to go with his wife and Tasha to
13 pick up their kids somewhere?

14 A No.

15 Q But if you told the police that, that would have been the
16 truth?

17 A Yes.

18 Q Okay. So you must have gotten there, what time do you
19 think? Would it have been around noon, say? Or what?

20 A Sometime that afternoon.

21 Q Okay. So he would have been there a couple times in the
22 afternoon at least, if not in the morning?

23 A Yes.

24 Q Do you know if he was there in the morning?

25 A No, I don't know.

1 Q You don't know? Now, the car, this white Honda, they had,
2 Anthony had just gotten that car, is that right?

3 A I don't recall.

4 Q You remember that it was something that he'd had maybe for a
5 day or two? Do you remember telling the police about that?

6 A No.

7 Q Okay. You had known the Wyche brothers, well, you knew Pete
8 from back from middle school, right?

9 A Yes.

10 Q Okay. And Anthony you'd met -- sorry -- Darryl you'd met
11 about six or seven years earlier?

12 A Yes.

13 Q Okay. So how often would you say you'd talk to Darryl in a
14 week? How many times?

15 A Not often.

16 Q A couple times a week?

17 A No.

18 Q Something like that?

19 A No.

20 Q What about that week? I mean, would you say that there had
21 been a couple different days when you'd had phone calls with him?

22 A Yes.

23 Q Okay. And did you know he was going to be getting a new car
24 or that he had gotten a new car, a white Honda?

25 A No.

1 Q No, or you don't remember?

2 A I don't remember.

3 Q Okay. Okay. Do you remember when Detective Niedermeier
4 asked you about the white Honda station wagon, if you'd ever seen
5 Darryl or Anthony in it before?

6 A No.

7 Q Okay. Do you remember telling him, Anthony's never been in
8 that car before, because, well, up until Sunday, because Darryl
9 just got that car, Darryl might have been in it a couple of
10 times, he just got it two days before, it's a new car?

11 MR. HANLON: Your Honor, objection to the reading of
12 the transcript.

13 THE COURT: Rephrase the question, Ms. Rhodes.

14 Q Do you remember telling Detective Niedermeier that Darryl
15 Wyche had just gotten that car two days before, it was a new car?

16 A No, I don't remember.

17 Q Okay. Do you recall seeing that car parked outside of
18 Brandy's that night?

19 A Yes.

20 Q Okay. And had you ever seen it, had you ever seen it the
21 day before or the day before that, after Darryl got it?

22 A If I had seen him, he was driving that car.

23 Q Okay.

24 A I don't remember if I saw him a couple days prior to that
25 because I didn't see him all the time.

1 Q Okay. So do you think that was the first time you saw that
2 car?

3 A Yes.

4 Q Okay. And you remember they also had a green car that
5 night, too?

6 A No, I don't remember.

7 Q Okay. Did you know when -- at some point Darryl had a sedan
8 business, doing some chauffeuring and that sort of thing. Do you
9 remember that? Do you remember hearing about that?

10 A Yes.

11 Q And in that business he had, obviously had to have a lot of
12 different cars, right, to provide the services?

13 A Yes.

14 Q Okay. And did you ever see any of those cars that he had?

15 A No.

16 Q All right. Do you remember telling Detective Niedermeier
17 that Deezo and Darryl and Anthony left around 12:15?

18 A I don't even remember Deezo being there, it was so long ago.
19 But I thought that Darryl and Anthony left around that time.

20 Q Okay. You know who Deezo is? I mean, you know what he
21 looks like more or less?

22 A Not really. I've seen him but I probably don't remember
23 what he looks like.

24 Q When was the last time you saw him?

25 A That night, as I recall.

1 Q Okay. As far as you know, you've never seen him since then?

2 A No.

3 Q And were you aware what Darryl did for his money?

4 A I heard what he did. I wasn't, I've never witnessed. But I
5 just --

6 Q Okay. Who did you hear it from?

7 A Just the streets. Nobody in particular.

8 Q Okay. And do you remember when, when Darryl went out
9 somewhere, just in general, did he like to drive?

10 A No.

11 Q Okay. So if he was going with somebody else, he'd have them
12 drive?

13 A Yes.

14 Q Okay. All right. Do you remember Darryl telling, do you
15 remember telling the police when you were with them in March of
16 2002 some other things that Darryl had said he was going to do
17 that night?

18 A No.

19 Q Okay. Do you remember -- Court's indulgence. Do you
20 remember one of the officers asking you where they were going and
21 then your telling them that you had, that Darryl had said he had
22 to go out to Essex and he had to go over to East Baltimore and
23 that he had to go back over to West Baltimore? Do you remember
24 that?

25 A No.

1 Q Okay. But if -- all right. Thank you. And when do you
2 think that you kind of stopped remembering all of this stuff? I
3 mean, you remembered it in March of 2002 and you remembered it, a
4 lot of things in 2004.

5 A Well, in '04, I, they had to refresh my memory of some
6 things because I didn't remember in '04.

7 Q Okay. So in 2004, the prosecutors used your, the police
8 interviews to refresh your memory?

9 A Yes.

10 Q Okay. Okay. Do you remember Darryl's getting a whole bunch
11 of phone calls that night?

12 A No.

13 Q Okay. Do you remember, you remember what time they got back
14 from DC around? Maybe 9 or 10:00?

15 A No.

16 Q You don't remember?

17 A No. I don't remember him coming from DC.

18 Q Oh, you don't remember that he and Deezo had gone to DC?

19 A No.

20 Q Okay. Do you remember that -- and you have no idea what
21 time they came back?

22 A No.

23 Q Or do you remember what time they came in to the house?

24 A I don't remember exact time. It was at night, though.

25 Q Okay. Would you remember -- okay. Court's indulgence.

1 Okay. Do you remember saying before to the police that
2 when they came back, that when Deezo and Darryl came in, that it
3 was about roughly 10:00?

4 A No, I don't remember.

5 Q Okay. Do you remember that Darryl got -- well, let me ask
6 you this. When you would call Darryl to reach him, you would
7 call him on his cell phone?

8 A Yes.

9 Q And you would use your cell phone?

10 A Yes.

11 Q Okay. Do you remember his cell phone number back then?

12 A No.

13 Q Does the number 443-691-9203 sound familiar?

14 A No.

15 Q Okay. Do you remember your cell phone back then?

16 A No.

17 Q Okay. Does the number 410-262-0798 sound familiar as one of
18 your old cell phone numbers or perhaps your current cell phone
19 number?

20 A No. It doesn't sound familiar. That's not my current
21 number.

22 Q Okay. Could it have been your number in 2002?

23 A Yes.

24 Q All right. And did Darryl usually have a couple different
25 cell phones or several cell phones?

1 A Yes.

2 Q Okay. So to reach him, people would call him on different
3 numbers?

4 A Yes.

5 Q Okay. So on one of his cell phones that night, do you
6 recall him getting four calls between 9 and 10:00?

7 A I don't know how many calls he got. His phones ring a lot.

8 Q Okay. Do you remember him getting, between 10 p.m. and
9 11:40 p.m., 14 calls?

10 A No.

11 Q Okay. On one phone? No? Okay. Now, is it -- I asked you
12 before but I want to clarify. Is it possible that, that you
13 spoke to Darryl ten times that week? Is it possible?

14 A In the week?

15 Q In the week.

16 A Yes. That's possible.

17 Q Okay. And it's possible that you spoke to him five times
18 that day?

19 A It's possible. I wouldn't think I spoke to him five times
20 on the phone because I saw him in person as well. So --

21 Q Well, or that maybe some of the calls didn't go through but
22 there were five attempts or five calls made back and forth?

23 A That's possible.

24 MR. HANLON: Objection, Your Honor.

25 THE COURT: Well, you asked about whether she spoke to

1 him and then you asked about whether there were calls back and
2 forth, right?

3 MS. RHODES: Right. Is it possible some of the calls,
4 some of the calls didn't actually connect but there were five
5 attempts?

6 THE COURT: Okay. And I think she said that's
7 possible.

8 BY MS. RHODES:

9 Q Right. Okay. So I'm going to ask you. So you have no idea
10 what Deeze's relationship was with Darryl, right?

11 A They were friends.

12 Q Okay. Friends. Do you know of any other relationship they
13 had?

14 A No.

15 Q Okay. And do you know if -- so you don't know if, you don't
16 know when Deeze hung out around Darryl?

17 A No.

18 Q And when he didn't?

19 A No.

20 Q Okay. And do you remember the other nickname that you used
21 for Deeze when you talked to the police?

22 A No.

23 Q And you don't know anything -- do you know how, how much
24 Darryl made in a week from his drug business?

25 A No.

1 Q Do you know how much, how much in the way of drugs he was
2 moving a week, or selling?

3 A No.

4 Q Okay.

5 A I just knew that, I've heard that he sold drugs because he's
6 been arrested for that. I've never witnessed him doing anything
7 like that.

8 Q Okay. And do you know if his wife, Natasha, helped him in
9 that business at all?

10 A No.

11 Q Do you know Natasha?

12 A Yes.

13 Q You've met her?

14 A Yes.

15 Q Did Darryl ever mention going to church that morning?

16 A I don't remember, but I know that he did go to church on
17 Sundays.

18 Q Okay. Did he use his phone a lot when he was in church?

19 A I wouldn't know.

20 Q Okay. Do you recall being asked in the grand jury -- again,
21 this is back to January of 2004 -- that they asked a lot of
22 questions about this call that, where you heard the name Bo
23 mentioned by Darryl, right?

24 A Yes.

25 Q Okay. And you were asked by Mr. Harding, okay, after the

1 phone conversation, did Darryl ask something of Anthony? Do you
2 remember that question?

3 A Yes.

4 Q Okay. And do you remember saying that he asked him before
5 the phone conversation to drive him? Do you remember that?

6 A No.

7 Q Okay. And Mr. Harding said, before the phone conversation?
8 Do you recall saying, um-hum. And then he ask him if he was
9 still going to drive. Do you remember that?

10 A I don't remember him asking before the phone conversation.
11 I remember him asking could he drive him somewhere.

12 Q Okay. But now you're not sure whether it was before the
13 phone conversation or not?

14 A No, I don't know if it was before or after, after the
15 conversation.

16 Q But it could have been, when you were under oath before, you
17 have said to the judge you would not have lied, right?

18 A Right.

19 Q So we -- okay. Thank you. Court's indulgence.

20 (Pause in Proceedings.)

21 THE COURT: Ms. Rhodes, you and Mr. Lawlor want to
22 withdraw your objection?

23 MS. RHODES: We could leave that for another time, Your
24 Honor.

25 THE COURT: Well, no. The witness is here now.

1 MS. RHODES: As to the grand jury issue?

2 THE COURT: Yeah.

3 MS. RHODES: I will withdraw Mr. Lawlor's objection,
4 yes.

5 THE COURT: Okay. Well, in that light, ladies and
6 gentlemen, the objection being withdrawn, you may consider the
7 prior statements made under oath in the grand jury by Ms. Green
8 back in 2004 as evidence in this case just as if she had
9 testified to those facts to you under oath here on the witness
10 stand. The objection is withdrawn. Go ahead, Ms. Rhodes.

11 MS. RHODES: Thank you, Your Honor. Your Honor, does
12 that ruling apply to the police, the recorded police statement as
13 well?

14 THE COURT: No. Only to the grand jury transcript.

15 BY MS. RHODES:

16 Q All right. Is it correct, Ms. Green, that you, that you're
17 saying today that you don't remember anything, anything that you
18 told the police that day in March of 2002?

19 THE COURT: Well, wait. Now, that's not a fair
20 question, Ms. Rhodes.

21 MS. RHODES: Well, I need to narrow down where she is.
22 That's why I'm --

23 THE COURT: But you're going to have to do it question
24 by question. You can't ask somebody whether they don't remember
25 anything about what they said years ago.

1 MS. RHODES: Okay. Court Court's indulgence.

2 THE COURT: Why don't you confer with Mr. Hanlon and
3 see if the two of you can't reach agreement on some of this
4 stuff?

5 MS. RHODES: All right.

6 (Pause in Proceedings.)

7 THE COURT: Would you like more water, Ms. Green?

8 (Pause in Proceedings.)

9 THE COURT: It appears, ladies and gentlemen, that
10 counsel may need a few more minutes to work out their
11 arrangement, if any.

12 MS. RHODES: That's correct, Your Honor.

13 THE COURT: Why don't we take our morning recess at
14 this time? Please leave your note pads in your chairs. Have no
15 discussion about the evidence you've heard so far or any aspect
16 of the case. Continue to keep an open mind about all issues.

17 We will stand in recess for 15 minutes.

18 (Recess at 11:55 a.m.)

19 (Defendants not present in courtroom.)

20 THE COURT: Any agreement reached, Ms. Rhodes?

21 MS. RHODES: They are still deciding. But what we are
22 proposing is that the grand jury transcript come in as
23 substantive evidence and with one, one redaction that we've
24 agreed on. Actually, two. And then that what they're debating
25 about is how to deal with the police transcript. And I've

1 proposed a couple of ways of doing that.

2 THE COURT: Police transcript?

3 MS. RHODES: The police interview transcript, which is
4 also a recorded statement.

5 THE COURT: Oh, it's a recorded statement. Not under
6 oath?

7 MS. RHODES: Right.

8 THE COURT: Obviously. Mr. Hanlon?

9 (Defendants enter the courtroom.)

10 MS. RHODES: Although she has said that it was used as
11 the basis for prepping her for the grand jury.

12 MR. HANLON: Should I wait, Your Honor?

13 THE COURT: No. Go ahead. What do you want to do, Mr.
14 Hanlon?

15 MR. HANLON: Your Honor, here's the thing that the
16 government's struggling with. I'm inclined to do this in the
17 most convenient way possible, which is to essentially, you know,
18 use both documents for whatever I think they could ultimately be
19 authenticated for. Here is the concern the government has.

20 We have a sworn grand jury transcript on the one hand
21 and we have a police transcript and an underlying police
22 recording on the other.

23 My sense is that the witness has recollected being in
24 the grand jury and made reference to the fact that she was trying
25 to be truthful, would not lie to the grand jury. She certainly

1 seemed to recognize her grand jury transcript. I'm confident
2 that the defense could authenticate the transcript of the police
3 interview if they needed to by bringing in Detective Niedermeier.

4 What I think would ultimately be a little different at
5 the end of the day is the purposes for which these respective
6 documents would be used. A sworn grand jury transcript, I think,
7 under certain circumstances could be admitted for the truth of
8 the matter asserted. The police interview, I think, could be
9 used as impeachment material but it seems to me that it would be
10 subject to the regular limitations being used for impeachment,
11 not for the truth of the matter asserted, but simply as, as
12 impeachment material. That's the difference that the government
13 sees between the two documents.

14 I don't want the defense to have to go through
15 authentication hoops, but I feel like at the end of the day that
16 is where we would be.

17 THE COURT: I don't know if, I don't know if there's
18 anything for me to decide or not. My ruling was clear. The
19 objection having been withdrawn by the defense, specifically by
20 Mr. Mitchell, I'm perfectly satisfied to have the grand jury
21 transcript come in as substantive evidence.

22 The police interview stands on a very different
23 footing. And if you two can't reach agreement, then, then I
24 don't know that there's anything more for me to do.

25 MR. HANLON: Just so the Court's aware, I have no

1 problem with the defense presenting portions of the grand jury or
2 the police interview as impeachment material here, and rather
3 than calling back Detective Niedermeier to re-testify.

4 THE COURT: But I thought Mr., I thought Ms. Rhodes's
5 point was that it's not impeachment because it's not
6 inconsistent. If she doesn't remember something she said to
7 Niedermeier, it's on the same footing as the grand jury
8 testimony. The only difference is the grand jury testimony is
9 under oath. But in my judgment, and I'd love -- Mr. Hanlon, by
10 the way, I really want to see your memorandum on recorded
11 recollection of grand jury testimony.

12 MR. HANLON: I'm sorry, Your Honor?

13 THE COURT: I said I really want you to give me a
14 memorandum on grand jury testimony as past recollection recorded.

15 MR. HARDING: I will, Your Honor.

16 THE COURT: But we're past that now. Perhaps Mr.
17 Kurland can help you out with that.

18 But anyway, before you speak, Mr. Kurland --

19 MS. RHODES: Your Honor --

20 THE COURT: I'm sorry?

21 MS. RHODES: Go ahead.

22 THE COURT: If there are specific facts that you want
23 in from the Niedermeier interview, I presume that Mr. Hanlon
24 would be willing to stipulate to those facts, or some of them.
25 In other words, what is it that you want, Ms. Rhodes, from the

1 police interview?

2 MS. RHODES: Several paragraphs, basically. I mean,
3 you know.

4 THE COURT: To what effect? To what effect?

5 MS. RHODES: You mean what's the information?

6 THE COURT: Yeah.

7 MS. RHODES: Oh, she says, her timing is a little bit
8 different. She's very clear and precise in the police interview.

9 THE COURT: What was date of that, by the way?

10 MS. RHODES: It was the 28th of March.

11 THE COURT: 2002?

12 MS. RHODES: Right.

13 THE COURT: All right.

14 MS. RHODES: And she's very clear that Deezo was there.
15 It's clear she knows Deezo. She calls him Deezo. He also goes
16 by Shabazz. She is clear that he had been there three times that
17 day.

18 She says in this other paragraph, yeah, Darryl said he
19 had to go out Essex and he said he had to go over, he had to go
20 over East Baltimore, then he had to go back over West Baltimore,
21 but I don't think that he did all that because it's, it's not
22 coming out right in the time frame. So she clearly --

23 THE COURT: Wait. Wait. She doesn't believe that he
24 did all of that?

25 MS. RHODES: Well, she said that's where he was going

1 to go. But I don't think he did all that.

2 THE COURT: Because he got murdered --

3 MS. RHODES: Right.

4 THE COURT: -- at midnight in West Baltimore.

5 MS. RHODES: Right. And she says, and she says, it's
6 not coming out right. In other words, she's saying he didn't
7 have time to do all those things before he got murdered.

8 THE COURT: Okay.

9 MS. RHODES: But a part of what she does here is in
10 our, we believe undermines some of Deeze's testimony, Dwayne
11 Denham's testimony. So that's another reason why it's important
12 for us to have this.

13 She also says --

14 THE COURT: Well, if the government's objecting, the
15 Court's sustaining the objection. It's not admissible just
16 because it's recorded. This isn't state court. I'm not even
17 sure it would be admissible in state court.

18 MS. RHODES: I'm sorry, Your Honor. You're saying it's
19 not --

20 THE COURT: It's not admissible for the truth of the
21 matter asserted, her interview.

22 MS. RHODES: Well, the only -- that's fine. I just,
23 what I said to Mr. Hanlon was the way that, I was going to have
24 her in a lump deny remembering this. But the Court didn't want
25 me to do that. So I can go through the things that she denies

1 and then call Detective Niedermeier to say, this is what she told
2 me in the interview.

3 THE COURT: You're not going to be able to impeach
4 Deezo by having --

5 MS. RHODES: Not Deezo. No. It's impeaching --

6 THE COURT: No. But that's the point of, the prior
7 statements that you want in as substantive evidence coming from
8 Ms. Green are for the purpose of impeaching Denham.

9 MS. RHODES: No. No, Your Honor. No.

10 THE COURT: Okay. Then I missed something. I missed
11 something.

12 MS. RHODES: I said it also undermines to some extent
13 the whole picture that Deezo is painting. It's not a direct
14 impeachment of Deezo at all. The impeachment would be of her
15 because she says, I don't recall this. And so I think I'm
16 entitled to call Detective Niedermeier to say, yes, I had an
17 interview, and play some of the interview, or ask him, is this
18 what happened in the interview?

19 THE COURT: But that's not -- I have no difficulty
20 whatsoever in concluding that the witness' assertion of a failure
21 of recollection is genuine. I confess I've almost never seen it
22 quite this dramatically. But your cross examination of this
23 witness bears out the testimony of this witness to Mr. Hanlon.
24 I'm sure we were all sitting here as she began her refrain of, I
25 don't recall, I don't recall, even when Mr. Hanlon showed her the

1 grand jury transcript and she, she, she validated the transcript.
2 And yet, I still don't recall. And that's why I got into it.

3 Obviously, you saw I was a little bit incredulous; that
4 you read the transcript, you say, yes, I remember being in the
5 grand jury. She'd already talked about that night. She
6 remembers the phone call. But your cross examination, again, as
7 I say, seems to me to justify my finding that her failure of
8 recollection is genuine. It is a genuine failure of
9 recollection. It's not some maneuver on her part or
10 disingenuousness.

11 So it's not inconsistent. To say "I genuinely don't
12 remember" is not inconsistent with anything anybody previously
13 said. So it's not impeaching of her to show the Niedermeier
14 interview.

15 Now, if you can get the Niedermeier interview before
16 the jury on some other basis, either by agreement of the
17 government or on some other exception to the hearsay rule,
18 obviously, you can do it. But it's not impeaching of her to say,
19 I don't remember. You can't impeach a genuine failure of
20 recollection. It's just not there.

21 MS. RHODES: Well, in any event, Your Honor --

22 THE COURT: So, I mean -- I'm sorry? So you can go
23 through and ask her the questions and see what she remembers and
24 what she doesn't. But if she doesn't remember, it's not in for
25 the truth of the matter, nor is it in for impeachment. It's only

1 in to refresh her recollection.

2 MS. RHODES: Very well.

3 THE COURT: There's a whole line now. Mr. Kurland.

4 MR. KURLAND: Your Honor, because her substantive
5 testimony, even to the fact that she claims that she heard the
6 name "Bo" on the telephone, is admissible in the coconspirator
7 context against everybody, we have standing to comment here.

8 I just wanted to point out that, to the extent that the
9 parties during the break tried to work out stipulations, any
10 stipulation obviously requires the consent of all of the
11 defendants. And anything that's going to allow in blatantly
12 inadmissible evidence like the police statement shouldn't come in
13 as substantive evidence at all. And we would never, we wouldn't
14 stipulate to that, even if the government, for whatever reason,
15 and one particular defendant would.

16 Now, with respect to some other stuff, I mean, if, I
17 would love to give a talk to all the district judges, evidence
18 stuff, if you want to arrange that after the trial. It wasn't
19 past recollection recorded. It couldn't come in under that.

20 THE COURT: I still want to see Mr. Hanlon's
21 memorandum.

22 MR. KURLAND: He'd never be able to do it. I'll talk
23 to him friendly afterwards. But with respect to the grand jury
24 transcripts, okay, we have a problem with the entirety coming in
25 for a variety of reasons.

1 If the Court's finding is that, and it's clearly
2 supported by the record, that it's a genuine recollection,
3 failure of memory, then the Court should strike it. We would ask
4 the Court to strike the testimony that she was afraid because
5 that's, that's inconsistent because that sort of like leads, she
6 was unclear as to what she was afraid of. But if it's a genuine
7 memory loss, which the Court has found, then the other testimony
8 should be stricken. The government shouldn't be able to argue
9 anything with respect to the fear because that to some extent
10 conceivably could play into some argument with respect to some of
11 the charges.

12 THE COURT: I admitted that because I thought it was
13 proper government impeachment.

14 MR. KURLAND: All right.

15 THE COURT: Despite what I said about the genuineness
16 of her failure of recollection, the government was entitled to
17 show that there may be some other reason she's not being
18 forthcoming.

19 MR. KURLAND: But then with respect to the finding,
20 then, with respect to the, it's genuine memory refreshment, then
21 there's no basis for the parties to stipulate that the -- and
22 we'd object to that as well, then -- that the grand jury
23 testimony comes in as sub substantive evidence because it's not
24 going to be 801. The only way to get it in would be parts of it
25 --

1 THE COURT: No. It's already in because Ms. Rhodes --
2 Mr. Mitchell was the only person who objected. And while, yes,
3 we have, we've been operating under the rule that everybody is
4 deemed to have joined in an objection, under that rubric
5 everybody joined in the withdrawal of the objection as well.

6 MR. KURLAND: But that came up --

7 THE COURT: Just a moment, just a moment, just a
8 moment. Thereafter, I invited Ms. Rhodes and Mr. Hanlon to
9 confer to do exactly what they've now done. They've agreed that
10 this is ridiculous, that the jury has heard it all,
11 notwithstanding the Court's limiting instruction. The witness
12 has testified. She's here, available for cross examination to
13 everybody. And Mr. Hanlon and Ms. Rhodes have reached what
14 appears to me to be the perfectly sensible decision to just put
15 the grand jury transcript in with whatever redactions the two of
16 them and any of you on the other side believe might be necessary
17 before we actually give it to the jury. And that makes sense to
18 me.

19 Now, to the extent that Mr. Gardner or Mr. Martin or
20 Mr. Harris want to object, your objection is noted and overruled.
21 To the extent that any of those three defendants wish to fly spec
22 the grand jury transcript before it's given to the jury to ask
23 for additional redactions of particularly harmful testimony,
24 obviously, I'll consider that. But that's where we are.

25 The grand jury transcript of this witness' testimony,

1 of this witness, Ms. Green, as redacted is admitted as an exhibit
2 by agreement of the government and Mr. Mitchell.

3 MR. KURLAND: Then we want it clear on the record,
4 because this is hearsay coming in.

5 THE COURT: I said your objection is noted. But I
6 determined, as I say, not to repeat myself, when Ms., when Ms.,
7 Ms. Rhodes, I almost said Ms. Lawlor, when Ms. Rhodes withdrew
8 the -- by the way, with all respect, Mr. Lawlor, improper
9 objection and request for a limiting instruction by Mr. Lawlor
10 because Mr. Lawlor knew this wasn't his witness. And under the
11 one lawyer/one witness rule, Mr. Lawlor should not have spoken up
12 at all. And I suspected as much because Ms. Rhodes had already
13 told me yesterday, when we were arranging for her to step out it
14 take care of her personal matter, that she was going to handle
15 Ms. Green.

16 But I went ahead, anyway, because I thought it was
17 particularly important, and I knew that I would get a chance to
18 hear from Ms. Rhodes, I went ahead and gave the jury that
19 limiting instruction. And all other counsel were deemed to have
20 joined in that objection.

21 And then Ms. Rhodes, when it became perfectly clear to
22 the jury -- several of them chuckled -- when it became perfectly
23 clear that Ms. Rhodes had stuff in that grand jury transcript
24 that she wanted in substantively, it became perfectly obvious to
25 everybody that the thing to do was just to put the grand jury

1 transcript in and forget about Ms. Green's failure of
2 recollection.

3 And when Ms. Rhodes withdrew the objection, counsel for
4 Mr. Gardner, Mr. Martin, and Mr. Harris were deemed to have
5 joined in Mr. Lawlor's improper objection and Ms. Rhodes's
6 binding and appropriate withdrawal of that objection. And thus I
7 told the jury that --

8 MR. KURLAND: Your Honor --

9 THE COURT: -- what I told them. All right. Mr.
10 Kurland.

11 MR. KURLAND: To make the record cleaner, then, with
12 respect to the evidentiary basis, the witness is saying that she
13 doesn't recall is genuine means that she's unavailable under Rule
14 804. Then the grand jury testimony as a matter of evidence rule
15 should come in under Rule 804, but only the parts the defense
16 wants because the government has had an opportunity to examine
17 her at the grand jury.

18 That's the proper way of having the evidence
19 considered. But that means that the defense should be able to go
20 through the transcript and pick out what it wants. This is just
21 the way the rule operates. Because no defendant had an
22 opportunity to examine her at the grand jury. The government
23 did. Unless they can prove they didn't have a similar motive.
24 That would be --

25 THE COURT: Mr. Gardner's objection is noted and is

1 deemed joined in by Mr. Martin and Mr. Harris. All right. Let
2 me hear from Mr. Martin. Good morning.

3 MR. MARTIN: Your Honor --

4 THE COURT: Good afternoon.

5 MR. MARTIN: I'm not going to talk about that
6 particular subject. I think my head is exploding from all this.
7 I'm not quite sure where we are.

8 My concern is the issue you addressed briefly a few
9 minutes ago about why you allowed her to answer the question as
10 to whether she was afraid. My concern is that the way that Mr.
11 Hanlon asked the question was, are you failing to remember here
12 or -- it was a dual question -- you didn't want to come here and
13 you're not remembering why. And eventually she said, because I'm
14 afraid.

15 There's no foundation for that. What is she afraid of?
16 Is she afraid because this is a murder trial? Lots of people are
17 afraid. But there's an assumption that she's afraid because of
18 something these people did. And that's unfair, Your Honor. To
19 that extent, because you found that she has a genuine failure of
20 recollection, I would renew what Mr. Kurland said. And that is
21 that the government should not be allowed to argue when they get
22 to the end of this case that this witness didn't remember because
23 she was afraid.

24 THE COURT: Oh, oh.

25 MR. MARTIN: That's what I think Mr. Kurland was trying

1 to say.

2 THE COURT: Oh, is that what he was trying to say?

3 MR. MARTIN: I think so, Your Honor.

4 THE COURT: It's so helpful to have you, Mr. Martin. I
5 totally missed what Mr. Kurland was trying to say.

6 No. The government's not going to argue that. Of
7 course not. Of course not.

8 MR. MARTIN: Otherwise, I have an objection and a
9 motion for a mistrial for allowing her to answer the question.

10 THE COURT: No. No. The government's not going to
11 argue that. And of course, any of you are free, if you're
12 feeling pretty robust this afternoon, to question her as to why
13 she's afraid.

14 MR. MARTIN: I wouldn't touch that question.

15 THE COURT: I knew you wouldn't, Mr. Martin. But some
16 of your brethren over there might want to go there.

17 MR. MARTIN: Thank you.

18 MR. HARDING: Purely on scheduling, Your Honor. We
19 have a civilian witness, Andre Drake, whom we would like to get
20 done with before lunch. He's a very quick witness.

21 THE COURT: Well, I'm not going to interrupt Ms. Green.
22 So let's hurry up with Ms. Green.

23 MR. HARDING: I meant after we're done with Ms. Green,
24 can we extend the lunch hour?

25 THE COURT: Sure. Sure. Assuming she's not on the

1 stand until 1:30 or something.

2 MS. RHODES: Your Honor, Your Honor, I think it would
3 be helpful if I did take her after lunch because I need to get
4 the tape recording cued up because --

5 THE COURT: Why do you need the tape recording?

6 MS. RHODES: Because I want her to hear her own voice
7 and see if that refreshes her recollection.

8 THE COURT: No. I think you can use the transcript.

9 MS. RHODES: I can't, Your Honor, I can't imagine
10 anything better than hearing the tape to refresh her
11 recollection. I don't think that --

12 THE COURT: You can use the transcript.

13 MS. RHODES: All right.

14 THE COURT: It's a case management issue, Ms. Rhodes.
15 Mr. Pyne.

16 MR. PYNE: Just to let you know. Judge Grimm set in an
17 initial appearance in a case of mine at 1:30.

18 THE COURT: We should not be in here at 1:30.

19 MR. PYNE: Okay.

20 THE COURT: I'm not sure you'll get some lunch but we
21 shouldn't be in here at 1:30. Thank you. All right. We'll have
22 the jury, please, and Ms. Green back.

23 So which one of you wants to announce to the jury that
24 the grand jury transcript is being marked as an exhibit?

25 MR. HARDING: Mr. Hanlon will.

1 THE COURT: Well, the witness is with Ms. Rhodes. Do
2 you want to do that, Ms. Rhodes? Or I'll do it.

3 MS. RHODES: Sure.

4 THE COURT: All right.

5 MR. HANLON: That's fine, Your Honor.

6 THE COURT: I'll do it. Any idea how long you're going
7 to be, Ms. Rhodes?

8 MS. RHODES: Probably not that long.

9 THE COURT: Okay. Are you going to have much, if at
10 all, Mr. Martin?

11 MR. MARTIN: You know what question I might have asked,
12 I'm not asking.

13 THE COURT: All right. Mr. Crowe, Mr. Pyne?

14 MR. PYNE: Twenty minutes, maybe.

15 THE COURT: Mr. Kurland?

16 MR. KURLAND: Mr. Coburn's going to do it.

17 THE COURT: Mr. Coburn.

18 MR. COBURN: With Ms. Green? I don't think I have any
19 questions.

20 THE COURT: Okay. Good. All right. So it looks like
21 we can certainly get to, is it Mr. Davis? Or Deandre? No.

22 MR. HARDING: Drake. Did Mr. Pyne say he was going to
23 take 20 minutes, Your Honor?

24 THE COURT: Yes.

25 MR. PYNE: Possibly.

1 THE COURT: Possibly.

2 MR. HARDING: Okay.

3 THE COURT: So who's the witness?

4 MR. HARDING: Andre Drake. He's the guy who, he has to
5 get to work at 3:00.

6 THE COURT: We'll get to him.

7 (Jury enters the courtroom.)

8 THE COURT: Good afternoon, ladies and gentlemen of the
9 jury. Counsel have agreed, that is Ms. Rhodes and Mr. Hanlon,
10 have agreed that Ms. Green's grand jury testimony may properly be
11 marked as an exhibit in this case and will be made available to
12 you during your deliberations as an exhibit. And you may
13 consider her testimony before the grand jury as contained in that
14 transcript as evidence in this case for all purposes. You may
15 proceed when you're ready, Ms. Rhodes.

16 MS. RHODES: Thank you, Your Honor.

17 THE COURT: I should mention that that will be Court's
18 Exhibit Number One, the grand jury testimony of Ms. Green.

19 BY MS. RHODES:

20 Q Good afternoon. I just want to ask you a couple questions
21 about the statement that you gave to the police back in March of
22 2002. You said you remember there were a couple of officers
23 there, right?

24 A Yes.

25 Q Okay. And do you remember that one of them was Detective

1 Niedermeier? Do you remember that name?

2 A Yes.

3 Q And another one was Detective Patton? Does that ring a
4 bell?

5 A Yes.

6 Q Okay. And do you recall that they recorded the statement,
7 they had a recording?

8 A Yes.

9 Q Had a cassette machine going?

10 A Yes.

11 Q Okay. And they started out by saying what the date was and
12 what the time was. And they said that they were, who was
13 present. And they said present is Mr., is myself, Detective Gary
14 Niedermeier, Detective Bobby Patton, and Ms. Damita Green. Do
15 you remember that kind of introduction?

16 A Yes.

17 Q Okay. And then that they asked you to state your name and
18 your date of birth for the record?

19 A Yes.

20 Q Right? Kind of like what happened in here, right? And then
21 they asked you your, your address and the town that you were
22 living in, right?

23 A Yes.

24 Q Okay. And you gave them that information, right?

25 A Yes.

1 Q And at the time you were telling them the truth, right?

2 A Yes.

3 Q And your intention was to tell them the truth?

4 A Yes.

5 Q Just as it was when you testified in front of the grand
6 jury, right?

7 A Yes.

8 Q And just as it is here today?

9 A Yes.

10 Q Okay. And they told you that they were going to discuss the
11 homicide of the Wyche brothers, right?

12 A Yes.

13 Q Okay. And they asked you if you knew when it had occurred.
14 And you told them early Monday morning, is that right?

15 A Yes.

16 MR. HANLON: Objection, Your Honor.

17 THE COURT: Sustained to the form of the question.

18 Q They told you, they asked you if you knew when it had
19 occurred, right?

20 A Yes.

21 Q Okay. And you told them it had occurred Monday morning,
22 right?

23 MR. HANLON: Objection, Your Honor.

24 THE COURT: Sustained.

25 Q And did you tell them it was on Monday morning?

1 MR. HANLON: Objection, Your Honor.

2 THE COURT: Sustained.

3 Q And then Detective Niedermeier asked you if you had
4 information about the activities of Darryl and Anthony before
5 that, before they were murdered?

6 A Yes.

7 Q Okay. And you told them -- do you recall what you told
8 them?

9 MR. HANLON: Objection, Your Honor.

10 THE COURT: Sustained.

11 Q Do you recall now what you told them?

12 A Not everything.

13 Q Okay. Would it refresh your recollection to look at the, at
14 a copy of the transcript of that recording?

15 A Yes.

16 Q Okay. If you could turn the page on that document. And why
17 don't you read through that page and see if that refreshes your
18 memory on what they asked you and what you said?

19 Does reading that page, Ms. Green, refresh your memory
20 about what you said in that interview?

21 A Yes. The second page?

22 Q Yes.

23 A Yes.

24 Q Okay. And do you recall, do you recall what you said to
25 them about when, what happened when Darryl left, or what happened

1 shortly before he left?

2 A Yes.

3 Q And what was that?

4 MR. HANLON: Objection, Your Honor, as to what was
5 said.

6 THE COURT: Put a question.

7 Q What did you -- what happened after, before Darryl left?

8 A He received a phone call.

9 Q Okay. And do you recall what they were talking about, what
10 he was talking about?

11 A I could just hear his end.

12 Q Okay. And what did it sound like to you?

13 A He was supposed to be meeting him is what it sounded like,
14 meeting somebody.

15 Q Okay. And who else was around, then, during that phone
16 call?

17 A Me, Brandy, her sister, and Keisha, and his brother, Anthony
18 Wyche.

19 Q Okay. And was Deeze in the room, too, when that phone call
20 came?

21 A Yes. That's what it's saying. I don't recall him being
22 there.

23 THE COURT: I'm sorry to interrupt, Ms. Green. What we
24 need you to do. You've read the document?

25 THE WITNESS: Um-hum.

1 THE COURT: Okay. You can close the document. And now
2 answer Ms. Rhodes's questions.

3 BY MS. RHODES:

4 Q Okay. Do you recall, was Deezo there that night?

5 A Yes.

6 Q Okay. And was he --

7 MR. HANLON: Objection, Your Honor.

8 THE COURT: Overruled.

9 Q And was he -- and he was there, everybody was there when
10 Darryl got that call, right?

11 A Yes.

12 Q Okay. And they left about 12 or 12:15 that night, right?

13 A Yes.

14 Q Okay. Back to the interview with Detective Niedermeier. Do
15 you remember when he asked you if, about, about what time
16 everybody, or Darryl and Pete and Deezo left that night?

17 A Can you repeat that?

18 Q Do you remember when Detective Niedermeier asked you about
19 what time it was everybody left that night?

20 A I don't remember.

21 Q Okay. If you could look at Page Three of the recording, the
22 transcript, then. If you look down towards the bottom of the
23 page, where Detective Niedermeier, it says, and how close to the
24 time that they left was that? And then you give an answer.
25 Could you read that and see if it refreshes your memory?

1 A Yes.

2 Q Okay. And what time was it approximately that they left?

3 A It doesn't say the time.

4 THE COURT: The question, Ms. Green, is do you
5 remember?

6 THE WITNESS: I don't remember --

7 THE COURT: Okay.

8 THE WITNESS: -- the exact time they left.

9 THE COURT: All right.

10 BY MS. RHODES:

11 Q Okay.

12 A After the phone call, he, they left about maybe 30 minutes
13 after he got the call. I don't know exactly the time.

14 Q Okay. That's fine. And do you recall -- what did Darryl
15 say to anybody that you heard about where he was going?

16 A I don't recall.

17 Q Okay. Can you look at Page Four of the transcript? Sorry.
18 Can you look down at, after Officer Patton says, did they say
19 when they were leaving, where they were going, did they mention
20 that? Do you see that line?

21 A Yes.

22 Q Okay. And then if you could read your answer after that.

23 THE COURT: To yourself.

24 Q The rest of the page, and see if that refreshes your memory.

25 A It doesn't refresh my memory.

1 Q Okay. Is there any reason you can think of now that you
2 would have not told the truth to the detectives that night when
3 they were asking you questions?

4 A No.

5 Q Okay. And you would not have made up anything when you were
6 speaking to them, would you?

7 A No.

8 Q All right. And when Deeze came over that day, the first
9 time he showed up was when Darryl came back for the last time, is
10 that right?

11 A Yes.

12 Q And are you telling us that you had no idea that Deeze
13 helped Darryl with his drug business?

14 A No.

15 Q No --

16 A I don't know.

17 Q You don't, you had no idea?

18 A No.

19 Q Okay. Okay. And you still are not sure about the Honda
20 station wagon, when Darryl got that, is that right?

21 A Correct.

22 Q Do you recall Detective Niedermeier asking you about it?

23 A No.

24 Q Okay. Could you look at Page Eight of the transcript? And
25 look at about halfway down the page, where it says "Niedermeier."

1 And he asks a question about the Honda. And can you read that,
2 the next three paragraphs to yourself?

3 A Okay.

4 Q Okay. And reading that, does that refresh your memory at
5 all about what you told Detective Niedermeier?

6 A No. I don't remember that he had just got that car.

7 Q Okay. Do you recall Detective Niedermeier showing you some
8 photographs that night?

9 A Yes.

10 Q Okay. And do you recall signing on one of those
11 photographs?

12 A Yes.

13 Q Thank you. Nothing further, Your Honor.

14 MR. MARTIN: No questions, Your Honor.

15 CROSS EXAMINATION

16 BY MR. PYNE:

17 Q Good afternoon, Ms. Green. I'm Jim Pyne. I represent
18 Shelly Wayne Martin. Ms. Rhodes did cover some of the matters
19 that I was going to cover so I'll try to avoid repeating. But
20 there are some matters I wanted to ask you about.

21 So this night in question you're at Brandy's house, is
22 that correct?

23 A Yes.

24 Q And am I correct in that looking over -- well, let me start
25 with this. You do recall meeting with Detective Niedermeier

1 shortly after the murder happened?

2 A Yes.

3 Q And do you recall him interviewing you and you providing him
4 the information you had regarding the night before the murder?

5 A Yes.

6 Q And you've had a chance to review a transcript of that
7 interview?

8 A Yes.

9 Q And you have been able to remember some of those things
10 after, some of the things you told Detective Niedermeier now that
11 you've reviewed that transcript?

12 A Yes.

13 Q Okay. And do you recall that Keisha was present at Brandy's
14 house that night?

15 A Yes.

16 Q And do you recall that Peaches was present as well?

17 A Yes.

18 Q And who is Peaches?

19 A Brandy's sister.

20 Q Okay. Were you all together in one room in the house or
21 where were you in terms of the different individuals?

22 A We were in different rooms.

23 Q Okay. Do you recall Anthony Wyche being there all day?

24 A No.

25 Q You don't? Do you recall what part of the day Anthony Wyche

1 was present at that house?

2 A No. But he was there for a while.

3 Q Okay. Now, you do now recall that Deezo was there, the
4 individual you know as Deezo was there?

5 A Yes.

6 Q Okay. Do you recall that Darryl Wyche and Deezo came to the
7 house about 11:00?

8 A I'm not sure of the time. But they came that night.

9 Q Okay. Can you approximate, does 11:00 sound like it was in
10 the area of when they came?

11 A It's possible.

12 Q Okay. If you want to look at Page Six of your statement
13 that you gave to Detective Niedermeier. If you want to read your
14 first answer at the top of the page and see if that refreshes
15 your recollection.

16 A Okay.

17 Q Does that refresh your recollection?

18 A Yes.

19 Q Okay. So Darryl and Deezo did come back to Brandy's house
20 about 11 o'clock. Is that what you told Detective Niedermeier?

21 A Yes, that's what I told him. Just today I don't know the
22 exact time.

23 Q Okay. But today, as you sit here today, you don't recall
24 exactly?

25 A No.

1 Q Okay. I believe you told Ms. Rhodes, or it might have been
2 Mr. Hanlon, that you recall Darryl Wyche getting a phone call at
3 about 11:40, is that correct?

4 A Correct.

5 Q Okay. And during the course of this call, you heard only
6 Darryl's part of the conversation?

7 A Correct.

8 Q And you heard him refer to, you heard him say the name "Bo"
9 during that conversation, is that correct?

10 A Correct.

11 Q Okay. And I believe your testimony, again, I'm not sure you
12 recollect this today or not, that you heard Darryl also say, are
13 you still trying to get that? Do you recall that or not?

14 A No.

15 Q Okay. So you don't have a recollection of that? Do you
16 recall telling the grand jury that you recalled that?

17 A Yes.

18 Q Okay. Do you have any other recollection of anything else
19 you might have heard during that conversation?

20 A No.

21 Q Did you tell the grand jury anything else you might have
22 heard during that conversation?

23 A No.

24 Q And your testimony was that after this call, I think you've
25 given a couple different times. I think at one point you said it

1 was about 20 minutes after that call that they left, and then
2 more recently I think you said about 30 minutes after that call
3 they left. Do you recall exactly what your best estimate of the
4 time was that they left?

5 A No. I would say, well, 20 to 30 minutes.

6 Q 20 to 30 minutes?

7 A I don't, I can't remember.

8 Q Okay. Do you recall whether or not it was after midnight?

9 MR. HANLON: Objection, Your Honor.

10 THE COURT: Overruled. You may answer.

11 A No. I don't recall.

12 Q Okay. But you do recall that it was between 20 and 30
13 minutes after receiving the phone call?

14 A Yes.

15 Q Okay. Now, do you recall telling Detective Niedermeier that
16 they were driving the white Honda Accord when they left?

17 A Yes.

18 Q Okay. And do you recall telling him that Anthony was
19 driving?

20 A Yes.

21 Q Do you recall telling Detective Niedermeier that Darryl and
22 Anthony and Deeze all left together?

23 MR. HANLON: Objection, Your Honor.

24 THE COURT: Sustained.

25 Q Do you recall when Deeze left?

1 A They left together.

2 Q Okay. Did any of them make any statements about where they
3 were going, that you recall?

4 A No, I don't recall.

5 Q Do you recall any of them saying that they were going to
6 Essex?

7 A No.

8 Q Let me ask you to look at your statement to Detective
9 Niedermeier on Page 4. Ms. Rhodes may have already asked you to
10 look at this.

11 A Yes, she did.

12 Q Okay. And that did not refresh your recollection?

13 A No.

14 Q Okay. You do recall Darryl asking Anthony to drive for him,
15 is that correct?

16 A Yes.

17 Q Do you recall if this was before or after -- again, you may
18 have testified to this already -- whether this was before or
19 after the telephone call?

20 A I don't recall.

21 Q Okay. And it's your testimony today that you don't know
22 what the relationship with Deeze and Darryl Wyche was?

23 A Correct.

24 Q What kind of relationship?

25 A Correct. They were friends, to my knowledge.

1 Q Now, I believe your testimony was that when Darryl got this
2 phone call at about 11:40 that Deezo was present, is that
3 correct?

4 A Correct.

5 Q And you were able to hear Darryl refer to Bo and say, are
6 you still trying to get that, is that correct?

7 A Correct.

8 Q And how far away from Darryl were you, if you recall?

9 A I was in the living room, he was in the dining room.

10 Q And where was Deezo?

11 A I don't recall.

12 Q So you don't know whether or not he would have been able to
13 hear the same phone call?

14 A No.

15 Q I don't think I have anything further, Your Honor. Thank
16 you, Ms. Green.

17 THE WITNESS: You're welcome.

18 MR. COBURN: No questions, Your Honor.

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MR. HANLON:

22 Q Brief, I think, Your Honor. Ms. Green, at the end of Ms.
23 Rhodes's cross examination she asked you if you were shown any
24 photographs and if you were asked to sign any photographs?

25 A Yes.

1 Q You remember the detectives showed you some photographs and
2 asked you in any of six photographs of people you recognized the
3 person you'd referred to as Bo, is that right?

4 A Yes.

5 Q And did you identify somebody that you know of as the Bo
6 that you've talked about today?

7 A Yes.

8 Q I'm showing you, going to put up on the screen, a document
9 which is marked as W-37B. Is this a copy of the photo array the
10 detective showed you?

11 A Yes.

12 Q On top of every one of these photographs there's a place to
13 sign. Did you sign this photograph here as Bo?

14 A Yes.

15 Q Nothing further, Your Honor.

16 THE COURT: Thank you very much, Ms. Green. Good luck
17 with the baby.

18 MS. RHODES: Your Honor --

19 THE COURT: I'm sorry, Ms. Rhodes. Ms. Green, I'm
20 sorry. I apologize, Ms. Rhodes.

21 RE CROSS EXAMINATION

22 BY MS. RHODES:

23 Q Let me put this back up, that the government had up there.
24 That has the date of it of March 28th of 2002, right?

25 A Yes.

1 Q And the time of 7:30 p.m.?

2 A Yes.

3 Q Does that refresh your recollection of the date and time
4 that you were interviewing with Detective Niedermeier?

5 A No.

6 Q When you signed it, would you have checked -- is that your
7 handwriting, the date and time?

8 A Yes.

9 Q Okay. So you would have put the correct date and time
10 that --

11 A Yes.

12 Q -- meant, right? And you are telling us today that what you
13 told Detective Niedermeier was the truth, right?

14 A Yes.

15 Q Okay. And you're under oath today, right?

16 A Yes.

17 Q So you are swearing under oath that what you told Detective
18 Niedermeier on that date was the truth?

19 A Yes.

20 Q Okay. And you've also told us, to be clear, that when you,
21 before you did the grand jury testimony, the prosecutors went
22 over your police interview and transcript with you, is that
23 right?

24 MR. HANLON: Objection. Scope, Your Honor.

25 THE COURT: Sustained. That means don't answer.

1 MS. RHODES: Nothing further. Thank you, Your Honor.

2 THE COURT: Thank you very much, Ms. Green. You are
3 now excused. We have one more brief witness, I think, ladies and
4 gentlemen, before we break for lunch. And Mr. Harding, that
5 would be?

6 MR. HARDING: Andre Drake, Your Honor. The United
7 States calls Andre Drake.

8 ANDRE DRAKE, GOVERNMENT'S WITNESS, SWORN

9 THE WITNESS: Yes.

10 THE CLERK: Be seated. Will you speak directly toward
11 mike? State your name and spell it for the record, please.

12 THE WITNESS: Andre Drake. A-N --

13 MR. HARDING: Good afternoon, Mr. Drake.

14 THE COURT: He's going to spell it, Mr. Harding.

15 THE WITNESS: A-N-D-R-E. D-R-A-K-E.

16 DIRECT EXAMINATION

17 BY MR. HARDING:

18 Q Good afternoon, Mr. Drake. Can you tell us how old you are,
19 sir?

20 A 26.

21 Q Have you ever been convicted of a crime, Mr. Drake?

22 A Yes. As a juvenile.

23 Q Okay. Just a juvenile adjudication, is that correct?

24 A Yes.

25 Q How far did you get in school?

1 A Tenth grade.

2 Q What school did you go to school at?

3 A Harbor City.

4 THE COURT: Can you get closer to the mike, please?

5 THE WITNESS: Harbor City.

6 THE COURT: Speak directly into the mike, please.

7 Thank you.

8 BY MR. HARDING:

9 Q Are you employed right now, Mr. Drake?

10 A Yes.

11 Q Do you know Shelton Harris?

12 A Yes.

13 Q Could you point him out to us in the courtroom, please?

14 A Right there.

15 Q What kind of shirt is he wearing?

16 A Blue and white shirt.

17 Q Okay. Just for the record, you understand, Mr. Drake, the
18 record can't see who you're pointing to so we have to put in some
19 kind of physical description just for the person who types up the
20 transcript. Okay?

21 A Yes.

22 Q Also, do you know a guy named Willie Mitchell or Bo?

23 A Yes.

24 Q Do you see him here in the courtroom today?

25 A Yes.

1 Q Could you point him out and tell us what kind of shirt or
2 clothing he's wearing?

3 A Right there. Gray shirt.

4 Q Okay. Can the record reflect that the witness has
5 identified both Mr. Harris and Mr. Mitchell, Your Honor?

6 THE COURT: So noted.

7 Q How long have you known Mr. Harris, Mr. Drake?

8 A All my life.

9 Q Okay. Let me call your attention to just the last few
10 years. Did you, did there come a time when you moved into a
11 rental apartment or rental house at 2731 Seamon Avenue?

12 A Yes.

13 Q When was that?

14 A 2000. You asking me when did I move?

15 Q Yeah.

16 A I'm not sure when I moved in. Probably was around '99.

17 Q Okay. Very early on. Was it your place or someone else's
18 place?

19 A It was my child's mother place.

20 Q And what was her name?

21 A Shari Fickling.

22 Q Shari Fickling. Okay. Let me show you what's been marked
23 as PH 2. Can you tell us what that is?

24 A That's the house we lived in.

25 Q Okay. And that's 2731 Seamon Avenue. Is that in Cherry

1 Hill?

2 A Yes.

3 Q Okay. Did someone, while you were living there, did someone
4 else come to live there with you?

5 A Yes.

6 Q Who was that?

7 A Shelton.

8 Q When did he come there to live with you?

9 A After he came home in, came home in 2003. Came to stay with
10 us in 2004.

11 Q Okay. Do you remember about how long he stayed with you?

12 A Probably, I'd say about four or five months.

13 Q And those would have been at the end of 2003 and the
14 beginning of 2004, then, is that correct?

15 A Yes.

16 Q Okay. And you say he came home. Where did he come home
17 from?

18 A He was locked up.

19 Q Okay. Did he have a job during that three, four month
20 period when he was living with you?

21 A No.

22 Q Okay. Did you have a job?

23 A No.

24 Q Okay. Did he have some particular place in your house where
25 he used to sleep?

1 A Yes. He slept on the couch.

2 Q Okay. Did he have a place where he used to keep his stuff?

3 A Yes.

4 Q Okay. Where was that?

5 A In the pantry.

6 Q What room was the pantry in?

7 A It was in between the living room and the kitchen.

8 Q Okay. Are you aware that on January 21st, 2004 your place
9 got searched?

10 A Right.

11 Q Okay. Let me show you a picture that's been marked as SE-4.
12 You can't see this very well, I'm afraid. But you had a chance
13 to look at it outside, did you not?

14 A Yes.

15 Q Okay. Do you recognize, have you ever seen that gun before,
16 Mr. Drake?

17 A No, I haven't.

18 Q Is that your gun, Mr. Drake?

19 A No.

20 Q To your knowledge, did Shari Fickling have a gun?

21 A No.

22 Q And I also talked to you outside about what's underneath the
23 gun, which you also can't see very well. But do you recognize
24 what that is underneath the gun?

25 A No.

1 Q I could show you the photograph closer, if that would be
2 better. This is SE-4.

3 A Notebook.

4 Q A notebook. Did you recognize that notebook?

5 A Yes.

6 Q Whose notebook was that?

7 A It was a book of raps.

8 Q A book of raps? Did you say it was a book of raps, Mr.
9 Drake?

10 A Yes.

11 Q Okay. Okay. I'm just going to put on the screen here what
12 I'm going to mark as SE-20 and which, of course, you can't see at
13 all. So I'm going to actually show it to you. Does this look
14 like the book of raps that was in that photograph?

15 A I can't tell you if it was or if it wasn't.

16 Q Okay. Whose notebook was that that the gun was on in the
17 picture?

18 A It was a book of raps that Shelton wrote.

19 Q Okay. Shelton used to write raps when he was staying there
20 at your place?

21 A Yes. He wrote raps his whole life.

22 Q Okay. Because you knew him back, say, in 2002, 2003, the
23 years before he was living with you, too, didn't you?

24 A Yes.

25 Q Okay. Was he in a rap group?

1 A No.

2 Q He was not?

3 A No.

4 Q Do you know, did he ever record his rap music?

5 A Yes.

6 Q Did you ever listen to CD's of his rap music?

7 A Yes. Plenty of them.

8 Q Are you familiar with the titles of some of his CD's?

9 A Yes.

10 Q Can you tell us what you remember, names of some of them
11 were?

12 A The Heights, if I could say Pure Shit.

13 Q Pure Shit. Yes, you can say that.

14 A Yes.

15 Q Okay. Those are two of the names of the CD's you remember?

16 A Yes.

17 Q Did you used to help sell those CD's somewhat, sometimes?

18 A Yes.

19 Q And did Shelton sell those CD's, also?

20 A Yes.

21 Q Did Bo or Mr. Mitchell sell those CD's, also?

22 A Yes, from my knowledge.

23 Q Well, let me just ask you. Do you know about how many
24 copies of Pure Shit Mr. Harris sold?

25 A I'm not sure exact number. But he didn't sell that many.

1 Just basically giving them away to try to get exposure.

2 Q Okay. Do you have any idea how many he basically gave away
3 to get exposure?

4 A I would say probably 15, 20.

5 Q Okay. And you said you sold some of Pure Shit also, is that
6 correct?

7 A Yes.

8 Q How many did you sell?

9 A Probably between two, five. I don't know exact number.

10 Q How much were you selling them for or trying to sell them
11 for?

12 A \$5, \$4, \$3, a dollar.

13 Q Did Mr. Harris perform at clubs, to your knowledge?

14 A Yes.

15 Q Did you ever see him perform at a club?

16 A Yes.

17 Q Does the name Sheistyville or Shake Down mean anything to
18 you?

19 A Yes.

20 Q What are those names?

21 A The name of probably like, like a company. I wouldn't say a
22 company but I would say like, like the name of the movement he
23 was trying to be under, I guess.

24 Q Okay. The movement. And was Mr. Mitchell or Bo involved in
25 that movement, also?

1 A Say like producing.

2 Q He was like the producer? Okay. Do you know any clubs that
3 they used to perform in?

4 A Only know one. Five Seasons.

5 Q The Five Seasons? Did you ever see him perform there?

6 A Yes.

7 Q Okay. Let me show you what's been marked as Government
8 Exhibit PH-64. Do you recognize PH-64, Mr. Drake?

9 A Yes.

10 Q Where is Five Seasons located?

11 A Couldn't tell you the exact street.

12 Q Okay. Do you know what part of town it's in?

13 A Down by the jails. That's the only thing I can tell you.

14 Q Is it near Central Booking?

15 A Yes.

16 Q Okay.

17 THE COURT: Mr. Harding, I think he actually didn't say
18 what that exhibit was. Everybody could see it, but for the
19 record, just have the witness --

20 Q Okay. Can you tell us what the picture depicts?

21 A Five Seasons.

22 THE COURT: Okay. Thank you.

23 Q Did you ever hear Mr. Harris's raps on the radio?

24 A Yes. Like trying to, trying to get music on the radio,
25 basically.

1 Q Did he ever succeed in getting music on the radio?

2 A Yeah, once or twice.

3 Q What radio station?

4 A If I can remember, 88.9. 88. Yeah. I think it's 88.9.

5 Q Okay. So you actually heard the, one of Mr. Harris's rap
6 songs over, over the radio?

7 A Yes.

8 Q Once or twice, is that right?

9 A Yes.

10 Q Okay. I want to call your attention now to the day your
11 place got searched in January of '04. Were you home that day?

12 A No.

13 Q Was anybody home?

14 A No.

15 Q How did you find out that your place had gotten searched?

16 A My friend.

17 Q By a friend?

18 A Yes.

19 Q Did you speak to Shelton afterwards?

20 A No.

21 Q Were you aware that Shelton got arrested that morning?

22 A No.

23 Q Okay. Did you find out eventually that he got arrested?

24 A Eventually, yes.

25 Q Did you ever talk to him about the 45, the .45 caliber

1 semiautomatic that was recovered from your place?

2 A No.

3 Q Let me show you finally, if I may, some particular examples,
4 SE-12, SE-14, and SE-11. Do those look like Mr. Harris's raps?

5 A Yes.

6 Q And he used to write raps like that, is that correct --

7 A Yes.

8 Q -- during the time you knew him?

9 A Yes.

10 Q And I'm showing you also SE-10. Do you know what Free Bo
11 and Weaze means?

12 A Yes.

13 Q What?

14 A Exactly what it say. Free Bo.

15 Q Was Bo locked up at that time?

16 A Exactly. Yes.

17 Q Okay. Do you know Weaze personally?

18 A No, I don't.

19 Q The pantry where you say that Mr. Harris used to keep his
20 stuff, Mr. Drake, did that also have a small furnace in it?

21 A Yes. And a water heater.

22 Q And a water heater. Okay.

23 A Yes.

24 Q And I think you may have answered this before. Was it in
25 the kitchen area of your place?

1 A Yes.

2 Q Okay. I have no further questions, Your Honor.

3 CROSS EXAMINATION

4 BY MR. FLANNERY:

5 Q Mr. Drake, good morning. I'm sorry. Good afternoon. It's
6 well afternoon. I promise not to keep you very long. My name's
7 Paul Flannery. I'm one of the attorneys that represents Shelton
8 Harris.

9 A Yes.

10 Q Mr. Drake, you've known Shelton Harris, you testified, your
11 whole life?

12 A Yes.

13 Q And you understand that Shelton Harris at one point lived in
14 the Park Heights neighborhood?

15 A Yes.

16 Q And you know that, in fact, he moved out of the Park Heights
17 neighborhood at some point when he was around the age of 16?

18 A Yes.

19 Q But he used to come back up and visit you?

20 A Yes.

21 Q And you guys used to hang out together?

22 A Yes.

23 Q You guys were boyhood friends?

24 A Yes.

25 Q In fact, he had some family there that lived in Park

1 Heights? Do you understand that?

2 A No.

3 Q You didn't understand. Okay. When you lived on Seamon
4 Avenue, you lived there with your girlfriend and your
5 three-year-old son, correct?

6 A Yes.

7 Q And at some point Shelton Harris came to reside with you?

8 A Yes.

9 Q And he kept his personal belongings in a pantry in the
10 kitchen?

11 A Yes.

12 Q And there was another place, was there not, that he also
13 kept belongings, that was at the downstairs of your residence?
14 Is that true?

15 A The downstairs?

16 Q Yes.

17 A That was downstairs.

18 Q Okay. Is the pantry what you would sometimes refer to as a
19 boiler room?

20 A Yes.

21 Q Okay. So it's the pantry between the kitchen is what you
22 also sometimes refer to as boiler room because there was a
23 furnace in there?

24 A Yes.

25 Q And he kept his personal belongings in there, CD's,

1 notebooks, things like that?

2 A Yes.

3 Q And you never saw a gun in that pantry before?

4 A No, I didn't.

5 Q And to your understanding, your girlfriend never saw a gun?

6 A No.

7 Q Okay. It's fair to say, is it not, Mr. Drake, that you
8 never suspected at the time that Mr. Harris was living there that
9 he was involved in any type of narcotics activity?

10 A No.

11 MR. HARDING: Objection. Suspected.

12 THE COURT: Go ahead, Mr. Flannery.

13 Q To your knowledge, Mr. Harris was not involved in any
14 narcotics activity while he was residing with you?

15 A Yes.

16 Q That's correct, that he was not?

17 A Yes.

18 Q To your understanding?

19 MR. HARDING: Objection.

20 A Yes.

21 THE COURT: To his knowledge.

22 Q And in fact, you wouldn't have allowed him to stay there if
23 you thought he was?

24 A No.

25 Q Okay. He used to taxi your three-year-old son back and

1 forth from school, is that correct?

2 A No. He used to walk him back.

3 Q He used to walk him and back and forth to school?

4 A Yes.

5 Q And I'm sure you wouldn't have allowed him to walk your son
6 back and forth to school if you suspected that he was involved in
7 some type of illegal activity, correct?

8 A No.

9 Q Okay. About what times, if he was responsible for walking
10 your son back and forth from school, what times generally would
11 that be? Could you please tell me?

12 A Probably around, between 7:45 to 8:30 in the morning.

13 Q And he'd have to be back at some point later on in the day,
14 then, to walk him home?

15 A No.

16 Q Okay. So he would just walk him there?

17 A He would take him there or either me or my child's mother
18 would pick him up.

19 Q I see. Okay. Now, the pantry that is in the upstairs of
20 the apartment, you didn't go in there very often?

21 A No.

22 Q Okay. But it's fair to say that you did go in there
23 sometimes?

24 A Yes.

25 Q Because sometimes you'd have to get something out of there,

1 like a broom or something that you stored there? You would have
2 to get something out?

3 A Yes.

4 Q Okay. So anyone who would store their stuff in there, like
5 Mr. Harris, would expect that at some point you're going to go in
6 there at some point to get something out?

7 A Yes.

8 MR. HARDING: Objection.

9 THE COURT: Overruled.

10 MR. HARDING: To what Mr. Harris would expect.

11 THE COURT: Well, he's talking about someone who was
12 residing temporarily with another person and who was storing
13 their property in the premises. Go ahead, Mr. Flannery.

14 BY MR. FLANNERY:

15 Q And you never saw a gun in that pantry, correct, Mr. Drake?

16 A No.

17 Q Okay. So to your knowledge, the day that your home was
18 raided, to the best of your knowledge, you never saw a gun there?

19 A Right.

20 Q Okay. So to the best of your knowledge, you didn't know
21 that there was a weapon there?

22 A Exactly.

23 Q And you never saw Mr. Harris possess a gun when he was
24 residing with you inside your home?

25 A No, I didn't.

1 Q Never saw any gun. Now, you've had an opportunity before to
2 meet an individual you know as Bo?

3 A Yes.

4 Q You met him one time?

5 A Yes.

6 Q And you understood him to be involved with Mr. Harris in the
7 rap business?

8 A Yes.

9 Q And you understood him and Mr. Harris to frequent rap
10 studios or studios in order to record or generate rap music?

11 A Yes.

12 Q Because they were involved in trying to get a rap label off
13 the ground?

14 A Yes.

15 Q And in fact, you even went to the studio several times with
16 Mr. Harris?

17 A Yes, I did.

18 Q In order to see him rap?

19 A Yes, I did.

20 Q And you witnessed them rap?

21 A Yes, I did.

22 Q No further questions, Your Honor. Thank you, Mr. Drake.

23 THE COURT: Just a moment, Mr. Harding.

24 MR. COBURN: I know the hour is late, Your Honor. If
25 the Court wants, I'm happy to do it after lunch.

1 THE COURT: I'm hoping we can finish with Mr. Drake
2 before lunch.

3 MR. COBURN: It won't be long.

4 THE COURT: Okay.

5 CROSS EXAMINATION

6 BY MR. COBURN:

7 Q Good afternoon, Mr. Drake. Your understanding is that Mr.
8 Harris was trying to get on in the rap industry, is that right?

9 A Yes.

10 Q And it's a fact, isn't it, that you accompanied Mr. Harris
11 to places, one recording studio, and some other places where he
12 was trying to record his music, is that right?

13 A Yes.

14 Q One of them was on York Road, is that right?

15 A Yes.

16 Q Some of them were just basements where people would make
17 recording equipment available, is that right?

18 A No.

19 Q Okay. Maybe I just misunderstood what you said before.

20 A What did I say before?

21 Q Okay. Is it correct that some of the places you would go
22 would be places where there were connections with other people to
23 go in their basement and record things? Is that right or is that
24 wrong?

25 A That's wrong.

1 Q Okay.

2 A Only place I was that they recorded was at the studio.

3 Q Okay. And the reason you went along was because you wanted
4 to experience seeing somebody rap in the booth and being able to
5 put together a song using beats and different aspects of music,
6 is that right?

7 A Yes.

8 Q Now, you know the names of some of the other people that Mr.
9 Harris would meet up with at the studios, is that right?

10 A Yes.

11 Q One of them was TM, is that right?

12 A Yes.

13 Q And another one was Slo, is that right?

14 A No.

15 Q Is that wrong?

16 A That's wrong.

17 Q I'm not, I don't mean to quarrel with you at all. But do
18 you remember testifying in the grand jury in this matter?

19 A Yes.

20 Q Okay. And that was back in March of 2004, is that right?

21 A Yes.

22 Q Okay. Page 14, Line 19. Do you remember being asked this
23 question and giving this answer? You may really just not
24 remember. Just tell us if you do.

25 Do you know the names of any of these other people that

1 Mr. Harris would meet up with at the studios? Answer: I don't
2 know them by real names but I know it was TM and Slo.

3 Question: TM and Slo? Answer: Transcript says
4 um-hum.

5 Does that, does that refresh your recollection at all
6 or do you think, you still think that's wrong?

7 A I never said that they would meet up at nowhere. I did say
8 that I knew the names but I never said nothing about meeting up
9 nowhere.

10 Q Okay. Okay. Do you know somebody by the name of Shawn
11 Gardner?

12 A No, I don't.

13 Q Do you know somebody by the name of Goo?

14 A No.

15 Q So far as you know, was anybody like that -- well, of
16 course, you've never heard of them before, right?

17 A Right.

18 Q Okay. Now, was your understanding that Shelton, TM, and,
19 and again, of course if this is wrong, just let me know, Shelton,
20 TM, and Slo were trying to form a little group, is that right?

21 A Yes.

22 Q And was that group or the record label they were trying to
23 form or be involved with, was that called Shake Down
24 Entertainment?

25 A Yes.

1 Q Okay. Now, you told the prosecutor when he was asking you
2 questions just a couple of minutes ago that you've listened to
3 Mr. Harris's music on a lot of different occasions, right?

4 A Yes.

5 Q You've heard him play in a club, right?

6 A Yes.

7 Q It's on the radio at least once, right?

8 A Yes.

9 Q And you've listened to his CD's, I think you said, quite a
10 number of times, or something like that?

11 A Yes.

12 Q Would you describe this kind of music as, is this gangsta
13 rap? Is that the right word or do you think that's not right?

14 A No, that's not right.

15 Q Okay. Based on the fact that, I mean, you've been exposed,
16 you know, known Mr. Harris your whole life or his whole life and
17 you've been exposed to this music over a period of time, as you
18 told the prosecutors when they were asking you questions, I'm
19 just going to ask you about your own views of it, your opinions
20 about it.

21 MR. HARDING: Objection.

22 THE COURT: Sustained.

23 MR. COBURN: May I be heard on that, Your Honor?

24 THE COURT: No. You want this witness to tell the jury
25 what he thinks about Mr. Harris's music?

1 MR. COBURN: I do. I would like to make an offer.

2 THE COURT: No. I'll sustain the objection.

3 MR. COBURN: Okay. Thank you.

4 THE COURT: He's already said he didn't think it was
5 gangsta rap. No objection to that. If you want to, like, pursue
6 that a little bit.

7 BY MR. COBURN:

8 Q Okay. Just to follow up on your answer about the, you
9 didn't think this was gangsta rap. Did you believe or do you
10 believe that it was the purpose of this music to try to
11 intimidate anyone?

12 A No.

13 MR. HARDING: Objection.

14 THE COURT: I'll sustain the objection.

15 MR. COBURN: Thank you, Your Honor.

16 THE COURT: You may redirect.

17 REDIRECT EXAMINATION

18 BY MR. HARDING:

19 Q When Mr. Flannery was questioning you, you said that you
20 never saw narcotics in your apartment when Mr. Harris, during
21 that three or four month period at the end of 2003, beginning of
22 2004, when Mr. Harris was living with you, you never saw him with
23 narcotics in your place, is that correct?

24 A Yes.

25 MR. FLANNERY: Objection, Your Honor.

1 THE COURT: Overruled. Go ahead.

2 Q And you never saw him with that gun that was discovered out
3 of your apartment, either, did you?

4 A No, I didn't.

5 Q Thank you. I have no further questions.

6 THE COURT: Thank you, Mr. Drake.

7 MS. RHODES: Your Honor, I have a few.

8 THE COURT: Sorry, Ms. Rhodes.

9 RE CROSS EXAMINATION

10 BY MS. RHODES:

11 Q That's okay. Raised on cross. Mr. Drake, I just have a
12 couple of questions for you very briefly. You said that the,
13 that when you all were selling or giving away these CD's, a lot
14 of it was just to get exposure for their music, right?

15 A Yes.

16 Q So sometimes you do give them away because you want people
17 to hear their beats and maybe they'll take off, right?

18 A Right.

19 Q Okay. Thanks. Nothing further, Your Honor.

20 THE COURT: What's your definition of gangsta rap?

21 THE WITNESS: My definition of gangsta rap is someone
22 that's from, that is a gangsta.

23 THE COURT: I see.

24 THE WITNESS: And I wouldn't put, I wouldn't put
25 Shelton as a gangster.

1 THE COURT: I see. Okay. Thank you. Any additional
2 questions? Thank you, Mr. Drake. Sorry to have to intruded on
3 your lunch hour, ladies and gentlemen, but we did want Mr. Drake
4 to be able to get back to work. Thank you for your indulgence.

5 We will stand in recess. It's now just about 1:30.
6 Please be back in the jury room by 2:45 p.m. and we'll resume at
7 that time.

8 Please leave your note pads on your chairs. Have no
9 discussion about any of the evidence or any aspect of the case.
10 Continue to keep an open mind.

11 Jury's excused until 2:45 p.m. We're in recess until
12 2:45.

13 (Luncheon recess at 1:25 p.m.)

14 THE COURT: Ready to proceed?

15 MR. HARDING: Yes. Judge, I should let you know that
16 we have Roy Jones and Kenny Welsh. Due to the cancellation of
17 Ernest Reynolds, we aren't going to take the rest of the
18 afternoon. We're going to be done in, I don't know, 45 minutes
19 or something like that.

20 THE COURT: All right.

21 MR. HARDING: Also, if it would be efficient, I would
22 like to see if defense counsel will stipulate as to Roy Jones's
23 expertise, since he's only testifying essentially as a negative
24 witness. He didn't actually recover any prints from the Wyche
25 brothers's car. So it would just expedite things if we can

1 stipulate as to his qualifications as an expert in latent
2 fingerprint comparison.

3 THE COURT: I think that's likely to happen. Just do
4 your basic voir dire and counsel will submit.

5 MR. HARDING: Okay.

6 THE COURT: Thank you. We'll have the jury, please.

7 Mr. Jones is first?

8 MR. HARDING: Yes.

9 THE COURT: Mr. Harding, you think we'll finish next
10 week, the government's case?

11 MR. HARDING: Yes, more confident than ever, Your
12 Honor, and growing in confidence.

13 THE COURT: Do you have a view that you wish to express
14 as to whether we take off all day Tuesday or should we go ahead
15 and keep what amounts, what will amount to about a half day
16 Tuesday, the late start and an early conclusion? And then we'll
17 have Friday available. Since counsel have already blocked that
18 out, we'll have that time available to us.

19 MR. HARDING: One reason I prefer to preserve Tuesday
20 is because of Rodney Hayes and that being his day off.

21 THE COURT: Okay. That clinches it. That's fine.
22 That's fine. Were you able to get any response from Judge
23 Nickerson?

24 MR. LAWLOR: Your Honor, I e-mailed the assistant. I'm
25 waiting to hear. If he's available I'll contact Judge

1 Nickerson's chambers.

2 THE COURT: In any event, you'll be excused.

3 MR. LAWLOR: Thank you. I'll work it out. I'll work
4 it out.

5 (Jury enters the courtroom.)

6 THE COURT: Good afternoon, ladies and gentlemen. Mr.
7 Harding, you may call your next witness.

8 MR. HARDING: Yes. Thank you, Your Honor. The United
9 States calls Roy Jones.

10 ROY JONES, GOVERNMENT'S WITNESS, SWORN

11 THE WITNESS: Yes, I do.

12 THE CLERK: Be seated. Will you speak directly toward
13 the mike? State your name and spell it for the record, please.

14 THE WITNESS: My name is Roy Jones. R-O-Y. J-O-N-E-S.
15 Latent Fingerprint Examiner for Baltimore City Police Department.

16 DIRECT EXAMINATION

17 BY MR. HARDING:

18 Q Thank you. Good afternoon, Mr. Jones.

19 A Good afternoon.

20 Q How long have you been a latent fingerprint examiner for
21 Baltimore City Police Department?

22 A For 24 years.

23 Q Okay. And you took a break at one point, did you not?
24 Didn't you retire from the Fingerprint Unit?

25 A Retired in 2003.

1 Q And what did you do then?

2 A I was off for maybe six months and I started working for the
3 Maryland State Police Department as a latent fingerprint
4 examiner.

5 Q And then you returned to the Baltimore City Police
6 Department because you couldn't tear yourself away from Baltimore
7 City, is that right?

8 A That's correct.

9 Q How long did you spend working for the State Police?

10 A Eight months.

11 Q Okay. Well, with all those years as a latent fingerprint
12 examiner, I assume that you've been qualified as an expert in
13 various courts, as an expert in latent fingerprint comparison, is
14 that correct?

15 A Yes, I have.

16 Q Dozens or how many times?

17 A For federal court, I've been qualified maybe 10 to 12 times.
18 And in circuit court, more than a hundred.

19 Q Okay. Your Honor, I would like to offer Mr. Jones as an
20 expert in the area of latent fingerprint comparison.

21 THE COURT: Any questions, counsel?

22 MS. RHODES: No objection, Your Honor.

23 THE COURT: All right. The witness will be accepted as
24 an expert in latent fingerprint.

25 BY MR. HARDING:

1 Q Mr. Jones, did you receive lift cards from crime scene
2 technicians that were prepared in processing a white Honda
3 station wagon in the case of the murders of Anthony and Darryl
4 Wyche?

5 A Yes, I did.

6 Q How many lift cards were there that the technicians were
7 able to put together for you?

8 A They made 17 lift cards.

9 Q Okay. Did you, after you got the lift cards, did you
10 undertake to eliminate fingerprints of the victims of that double
11 homicide, Darryl and Anthony Wyche?

12 A Yes, I did.

13 Q Were there any fingerprints of Darryl Wyche recovered from
14 the car or from the contents of the car?

15 A Yes, there was.

16 Q How many?

17 A Four.

18 Q Four of Darryl?

19 A Darryl Wyche.

20 Q Were there any fingerprints recovered on the car or on the
21 contents of the car from Anthony Wyche?

22 A No.

23 Q Okay. So how many prints that were suitable for comparison
24 were left after you eliminated the prints of Darryl Wyche?

25 A There were nine suitable latent prints remaining that was

1 not Darryl Wyche.

2 Q Okay. And I assume some of those came from the car and some
3 came from the contents of the car, is that correct?

4 A That's correct.

5 Q Is it accurate that most of them, in fact, came from some
6 CD's that were in the console area of the car?

7 A That's correct.

8 Q How many of the, of the suitable latent prints were on the
9 CD's in the console?

10 A Six.

11 Q And how many were from the rest of the car?

12 A Three.

13 Q Were you able to identify any of those nine suitable prints?

14 A They remain unidentified.

15 Q Thank you. I have no further questions, Your Honor.

16 THE COURT: Mr. Jones, thank you very much.

17 THE WITNESS: Thank you.

18 THE COURT: You are excused.

19 MR. HARDING: Your Honor, the United States calls
20 Kenneth Welsh.

21 THE COURT: Now, ladies and gentlemen of the jury, you
22 are about to hear testimony from this next witness concerning an
23 incident which is not charged as an offense in this case. I will
24 explain in greater detail at the appropriate time. The witness
25 can come in. The witness can come in.

1 I will explain in greater detail at the appropriate
2 time the appropriate uses you may make of this testimony, but I
3 simply caution you that the defendants in this case are not
4 charged with, and you may not consider any evidence regarding,
5 any homicides other than the homicides which are mentioned in the
6 indictment, which I will review with you as I have already, but I
7 will review with you in greater detail at the end of the case.

8 You may proceed, Mr. Harding. Detective, would you
9 stand and be sworn, please?

10 KENNETH WELSH, GOVERNMENT'S WITNESS, SWORN

11 THE WITNESS: Yes, I do.

12 THE CLERK: Be seated. Speak directly toward the mike.
13 State your name and spell it for the record, please.

14 THE WITNESS: Kenneth Welsh.

15 DIRECT EXAMINATION

16 BY MR. HARDING:

17 Q Mr. Welsh, are you retired from the Baltimore City Police
18 Department?

19 A Yes, I am.

20 Q How long have you been retired?

21 A Since 2004.

22 Q How long did you work for the Baltimore City Police
23 Department?

24 A 32 years.

25 Q When you left, what unit were you employed in?

1 A Homicide.

2 Q How long did you work in the Homicide Unit?

3 A Almost 20 years.

4 Q Let me call your attention to the evening of March 11th,
5 2002. Did you respond to a crime scene that night?

6 A Yes, I did.

7 Q And do you recall where the crime scene was?

8 A It was in the 2700 block of Lauretta Avenue in West
9 Baltimore.

10 Q Okay. Actually, I have a big map of Baltimore here.

11 Okay. Does Lauretta run east/west or north/south?

12 A East/west. East/west.

13 Q Okay. So I'm pointing right down around about in here.
14 Does Lauretta Avenue run east or west in West Baltimore there?

15 A Yes, it does.

16 Q What time did you arrive at this crime scene in the 2700
17 block of Lauretta Avenue?

18 A 2336 hours, which is 11:36 in the evening.

19 Q What did you observe when you got there?

20 A We observed the body of a black male, later identified as
21 Eric Lee, laying on the sidewalk in front of 2724 Lauretta
22 Avenue. He was facing north and south, his head facing north,
23 his feet facing south, kind of perpendicular to the sidewalk.

24 He was surrounded, circled in a pool of blood. He was
25 suffering from what appeared to be multiple gunshot wounds to the

1 head, neck, chest, back, torso.

2 We, the Crime Lab was called to come process the scene,
3 at which time we recovered ten shell casings that were on the
4 body, underneath the body, and around the area itself, along with
5 other evidence that was laying around.

6 Q Okay. Now, was there another person who was also shot at
7 that scene right near where the body of Mr. Epps was?

8 A Yes.

9 Q Where the body of Mr. Lee was?

10 A Yes. We received information there was an additional victim
11 who suffered a bullet wound to his calf. And prior to our
12 arrival he had been transported to Bon Secours Hospital.

13 Q Okay. By an ambulance, I assume, is that right?

14 A No, that's not correct.

15 Q Oh, how did he get to the hospital?

16 A By one of the, information was received after we got to the
17 scene that there were, in fact, four people initially standing on
18 Laretta Avenue when they were approached by two suspects in this
19 case, who asked them to lie on the ground. Two of them fled, two
20 stayed. Two complied, went to the ground. Two of them left.

21 One of the two that left then came back. And when I mean
22 leaving, stayed in the area. Came back, took Mr. Epps, who was
23 the person who got shot in the calf, put him in his car and took
24 him to Bon Secours Hospital.

25 Q Okay. Now you say you were there when the crime scene

1 technicians arrived to process the scene, is that correct?

2 A Yes.

3 Q I'd like to show you three exhibits, first of all. I'm
4 going to put these on the screen.

5 LEE-1. Can you see that, Detective?

6 A Yes, I can.

7 Q Can you tell us what's inside this envelope?

8 A It's a description of property and has the number three in
9 parentheses, dash .40 caliber casings, which is three .40 caliber
10 casings. Date of recovery, 3/12/2002. And from whom recovered,
11 the crime scene, which means we got them from the area where we
12 found the victim.

13 Q Okay. And the date of recovery was 3/12. But you said you
14 actually arrived there shortly before midnight on the 11th, is
15 that correct?

16 A That's correct.

17 Q Okay. Here's another one. LEE-2. Can you tell us what's
18 in this envelope?

19 A This has, again, it says, one, in parentheses, metal
20 fragment. And that would be either part of the casing and/or
21 part of the bullet that was left when it hit, obviously, it's
22 bones or hit someone's shot or hits concrete or something solid,
23 it tends to break up in small pieces.

24 In addition, there were seven .40 caliber casings.

25 Q Okay. And this is LEE-3. This one has a slightly later

1 date on it. Can you tell us what this is?

2 A This is one bullet. And date of recovery was 3/15, which is
3 almost four days later. That was recovered, a lot of times, when
4 you get a crime scene, it's at night. You go back over and over
5 again because you see things you see in the daytime you didn't
6 see at night. We went back that morning and, actually three days
7 later, and found a bullet. There was, at that point in time, we
8 don't know that that was there prior to our shooting but was part
9 our shooting, or just had been there for, for a while. There was
10 no way of telling at that point until it's submitted to
11 ballistics and checked.

12 Q Okay. Now, in addition to this crime scene evidence, did
13 you also respond to the autopsy for Mr. Lee?

14 A Yes.

15 Q Okay. And now I'm going to show you LEE-4. Can you tell us
16 what's in this envelope?

17 A This is a description of property, five bullet fragments.
18 The date of recovery 13 March 02. From whom recovered, Eric Lee.
19 Then the officer in the case, typically, when you go, the
20 homicide detective responds to the autopsy, which in this case
21 would have been the morning of the 12th. And you participate in
22 the entire autopsy. And the evidence that is recovered or, in
23 this case, bullet fragments that are taken from the body of the
24 victim, then given to us so we can take them to police
25 headquarters and have them submitted.

1 And a description of where they were recovered, the
2 entry, where they went in, back to front, left to right. Those
3 things are noted. Then we take that stuff and that's submitted
4 to Evidence Control.

5 Q Okay. Now, Detective, did you also, or you or one of your
6 colleagues respond --

7 THE COURT: I'm sorry to interrupt, Mr. Harding. But
8 are you going to take the items out of the envelope?

9 MR. HARDING: This one is a biohazard, Your Honor. And
10 so I wasn't going to do that. I can do it for the other three.

11 THE COURT: Okay. I think that would be appropriate.
12 Life is too uncertain to accept the testimony of what's in a
13 sealed envelope without opening the envelope.

14 BY MR. HARDING:

15 Q Okay. This is LEE-1, three shell casings.

16 Do you fill out the writing on these things, Detective,
17 or does someone else do that? The Crime Lab technician does
18 that, I suppose, right?

19 A Yes.

20 Q And this is LEE-2, which is seven shell casings and metal
21 fragments. This is actually labeled projectile, is that correct,
22 Detective?

23 A Yes.

24 Q And it looks like the crime scene technician wrote, From
25 under victim's head. Is that what that says?

1 A Yes, it does.

2 Q And here's another one. Metal fragment. Here's another
3 shell casing. Here's another one. The crime scene technician
4 puts the caliber of these casings on here, is that correct?

5 A That's correct.

6 Q .40 caliber? Were all of the casings recovered .40 caliber
7 casings?

8 A Yes, they were.

9 Q And were all of the bullets also .40 caliber, except for the
10 ones that were too damaged to tell?

11 A That's correct.

12 Q Okay. That takes care of LEE-2. And this is LEE-3, one
13 bullet. And it says bullet from brass in front of 2726 Lauretta.
14 Is that the address in front of which the body of Eric Lee was
15 found?

16 A I believe it's next door. I would, it's this, I think, was
17 the house immediately to its left. This one was the one that I
18 had indicated earlier that we went back to the scene three days
19 later and searched and found this.

20 Q Okay.

21 THE COURT: Thank you, Mr. Harding.

22 Q Certainly. Did you or one of your colleagues respond to Bon
23 Secours Hospital?

24 A Yes.

25 Q And was a bullet also recovered from the leg of Mr. Epps,

1 the shooting victim, who did not die?

2 A That's correct.

3 Q And was that entered into evidence, also?

4 A Yes, it was.

5 Q And did you go down to the Evidence Control Unit and gather
6 up these exhibits that we've just moved into evidence through
7 you?

8 A I had it done for me, yes.

9 Q And did you learn that that one, the bullet that was taken
10 out of Mr. Epps's leg was actually in a warehouse somewhere?

11 A Yes. It was, as one, when you saw in one of the envelopes
12 there, they have the red tape said Biohazard. If it is, in fact,
13 biohazard, I guess that one wasn't put there. But this,
14 apparently, was taken to a warehouse, which is stuff that is
15 stored separately from where all the rest of the evidence is,
16 simply because it is biohazard. And all it means it had blood on
17 it, it was taken from somebody's body.

18 So it is stored in the warehouse and at this point in
19 time it was just unavailable this morning for pickup.

20 Q Okay. We'll try to get it in next week, Detective. If you
21 could give us, though, the property number of that bullet that
22 was submitted. Do you have that available or do you need to
23 look?

24 A That was 017105, I believe, 02.

25 Q Do you want to look at the reports in this case? Would that

1 help?

2 A No, I think I have something. 02 being the year, 2002.
3 017105.

4 Q And that's the bullet that was taken out of Mr. Epps's leg?

5 A That was recovered from the hospital on the 19th of March,
6 which was seven or eight days later.

7 Q Now, after you recovered all these shell casings and
8 bullets, did you submit them to a unit that compares casings and
9 bullets from evidence recovered in other crimes?

10 A Yes. Other crimes that have occurred and are stored for the
11 purposes of crimes that may occur later where they have either
12 bullets or shell casings in evidence.

13 Q Okay. And did you eventually get back reports on
14 comparisons that were made between the evidence you had recovered
15 in this double shooting and the murders of Anthony and Darryl
16 Wyche?

17 A Yes.

18 Q As well as the murder of Tonya Jones Spence?

19 A Yes.

20 Q Okay. And a ballistics examiner would be the one to testify
21 about that, is that correct?

22 A That's correct.

23 Q Okay. Thank you. I think those are all the questions I
24 have for you today, Detective.

25 CROSS EXAMINATION

1 BY MR. PYNE:

2 Q I really just have one question, Mr. Welsh. Do you know why
3 the shell casings were packaged the way they were, with three in
4 one envelope and seven in the other?

5 A No, I do not. I mean, I could assume certain things, how
6 they were recovered. Sometimes it's more than one Crime Lab
7 technician. They can find seven. In some cases when they are
8 sent to ballistics later on, they don't necessarily want to
9 package lots of them all in one case. They split them up a
10 little bit. Just easier for ballistics to handle it.

11 Q Okay. But you don't, sitting here today, attach any
12 significance to the fact that they are packaged in that manner?

13 A No.

14 Q Thank you. That's all I have, Your Honor.

15 CROSS EXAMINATION

16 BY MR. KURLAND:

17 Q Is it Detective?

18 A Ex.

19 Q Ex-detective. Sir?

20 A That's fine.

21 Q Just one question. Mr. Lee, the victim. As part of your
22 investigation, he had attended a party earlier that evening with
23 a large number of people?

24 A That's correct.

25 Q Thank you. No further questions.

1 REDIRECT EXAMINATION

2 BY MR. HARDING:

3 Q You learned that, I assume, from talking to witnesses near
4 the scene, is that correct?

5 A Witnesses at the scene and the surviving people that were
6 at, at there initially when the shooting occurred, as well as
7 people in the party, yes.

8 Q Did you learn how many shooters there were?

9 A Two.

10 MR. KURLAND: Objection.

11 THE COURT: Overruled.

12 A Two.

13 Q Okay. Was anybody able to give you descriptions of the
14 shooter, Detective?

15 MR. KURLAND: Objection. Beyond the scope of my cross.

16 THE COURT: Overruled. You may answer yes or no,
17 Detective.

18 THE WITNESS: No.

19 MR. HARDING: Thank you. I have no further questions,
20 Your Honor.

21 THE COURT: Thank you very much, Detective. You're
22 excused. That's it. Through no fault of the government's
23 whatsoever, ladies and gentlemen, we have no additional witnesses
24 available to testify this afternoon. This arises from certain
25 legal issues that the Court has needed to give attention to.

1 What that means for you is that you get to leave a
2 little early today. We will be in session, I anticipate, truly
3 for a full day on Monday. And we'll all make our best effort to
4 start promptly at 9:30. And we'll be in session certainly
5 through 4:30, and perhaps a little later than 4:30, on Monday but
6 not past 5:00.

7 On Tuesday, Election Day, I think it would be most
8 efficacious for us to start at 11:00 and go until 3:00. That
9 means we won't break for lunch, obviously. But my purpose in
10 doing this is to maximize the convenience and minimize the
11 inconvenience for Election Day.

12 I actually had sort of an argument with my wife about
13 this. She said I should just not start until the afternoon. I
14 said, but no, some people who want to vote in the morning and who
15 knows how long the lines will be. Some people will want to vote
16 in the afternoon and who knows how long the lines will be. So
17 the compromise that I've settled on, since I'm the judge and not
18 just the husband, is we're going to start at 11 and I'm hoping
19 that that will give everybody all the time they could possibly
20 need, no matter how long you have to wait in line, if you do.
21 And then we'll break at three o'clock. And those of you who
22 would find it most convenient, given child care and other issues,
23 to vote in the evening, will have plenty of time to do that,
24 hopefully without having to stand in long lines.

25 So we'll be in session for about four hours. I would

1 expect we will take probably only one break at around 12:30,
2 1:00. And then we'll go through until three.

3 So my intention is, we'll be in session all day on
4 Monday. For the four days, for four hours or so on Tuesday, late
5 start, 11:00. I'll remind you on Monday. And break at three.
6 And then a full day on Wednesday and a full day on Thursday of
7 next week. And then only if needed will we be in session with
8 you on Friday of next week. Right now the government has reason
9 to believe very strongly that it will conclude its presentation
10 of evidence by the end of the day on Thursday of next week. If
11 that should happen, then we'll give you Friday off because there
12 will be certain issues that we'll have to deal with without your
13 presence. And then we'll resume the following week.

14 I remind you, of course, that in a criminal case a
15 defendant never has the burden to call any witnesses or introduce
16 any evidence, but has the right to do so. And I'm sure that, as
17 that time grows near, counsel for the defendants here will be
18 making decisions about whether they wish to call any witnesses or
19 introduce any evidence. But those decisions won't be made,
20 obviously, until probably late next week at the earliest.

21 So I will keep you apprised as we go along of what the
22 schedule is likely to be. Right now it looks very much like we
23 will conclude this case in its entirety before Thanksgiving. And
24 frankly, I will tell you, well before Thanksgiving.

25 So we again express our appreciation to you for the

1 inconvenience to your lives and the sacrifices you are making to
2 be with us these many weeks. This concludes, I think, week six
3 or maybe seven. I lose count. But you're off for the rest of
4 the week.

5 Continue to adhere scrupulously to all of my
6 instructions. Have no discussion about the case or about any of
7 the evidence. Continue to keep an open mind. Do not conduct any
8 investigation of any sort whatsoever. Do not visit the scene of
9 any locations that you've heard testified about. Do not look up
10 any words. Do not discuss the case with any family or friends.
11 Enjoy your weekend.

12 Please leave your note pads on your chair. And we will
13 see you Monday morning, November 3rd, 9:30, and we'll start
14 promptly at that time. Thank you, ladies and gentlemen. The
15 jury is excused.

16 (Jury exits the courtroom.)

17 And happy birthday. One of the jurors celebrated a
18 birthday today and the jurors gave her a card. It was very nice.
19 Anything for the good of the order?

20 MR. KURLAND: Judge, one procedural point.

21 THE COURT: Yes. Mr. Kurland.

22 MR. KURLAND: Your Honor, at the end of the lunch break
23 I was speaking with Mr. Hanlon about a procedural point and also
24 checking with the court clerk. In earlier testimony weeks ago,
25 there were several witnesses, I think three or four, were

1 references to other grand jury transcripts that haven't, that
2 during the testimony the predicates to admit them under Rule 801,
3 because they were clear, inconsistent statements, unlike this
4 witness who had issues with respect to memory, but those grand
5 jury transcripts have not yet been moved into evidence.

6 Is it the Court's preference to have the, if there's an
7 offer made to move in grand jury transcripts as a prior
8 inconsistent statement, to have it done during the witness'
9 testimony or can it be done any time before the close of the
10 evidence as long as it's before the jury?

11 THE COURT: It is not my practice, nor do I believe it
12 appropriate, to admit a transcript of a prior inconsistent
13 statement.

14 MR. KURLAND: That's what, the testimony today, when
15 the -- what's the Court's formal preference, then?

16 THE COURT: The prior inconsistent statement, whether
17 it appears in a grand jury transcript or whatever the source is,
18 even if it's only orally, is presented to the witness. The
19 witness either ratifies the prior statement or denies having made
20 it or testifies to the contrary, and thereby that prior
21 inconsistent statement, having been heard, in this instance seen
22 by the jury, is available to the jury for its consideration on
23 whether the witness should be believed. But the transcript
24 itself is not sent into the jury.

25 What we did here today was an accommodation to the

1 interests of justice by Ms. Rhodes and the government. The
2 witness had a failure of recollection, couldn't be refreshed.
3 And because there was prior testimony in the grand jury
4 transcript that both sides wanted in, although not the same
5 excerpts, they reached agreement to put the transcript in. And I
6 told the jury that they could take the transcript as the witness'
7 testimony.

8 So that's just, from my perspective, it's just an
9 unobjected-to, stipulated exhibit.

10 MR. KURLAND: But in a situation where a witness
11 testifies, say, to Point A on their testimony in court and they
12 are then presented with their grand jury transcript which says
13 something diametrically opposed, and the testimony, whether or
14 not the physical transcript is admitted, the testimony qualifies
15 as a prior inconsistent statement that's admissible for its
16 substantive truth under Rule 801, what's the Court's pleasure as
17 to how the procedure should go about as to getting that before
18 the jury, having the jury know that that isn't simply impeachment
19 evidence but could also be considered as substantive evidence?

20 It would be 801(d)(1)(1), I think, a prior inconsistent
21 statement which is definitionally not hearsay and can be used for
22 the truth of the matter asserted. I believe that situation arose
23 before and is going to arise again.

24 THE COURT: (D)(1)(a)?

25 MR. KURLAND: I'm sorry. It's 801 -- it's 801.

1 THE COURT: Yeah, (D) (1) (a).

2 MR. KURLAND: I think it is (D) (1) (a).

3 THE COURT: It is, it is.

4 MR. KURLAND: I just don't want to inadvertently -- I
5 don't want to inadvertently be in a position where something that
6 qualifies as substantive evidence that can be considered for the
7 truth of the matter asserted only comes in for impeachment value
8 when we want it in both for impeachment value and as substantive
9 evidence.

10 In the unique procedure this morning, the Court
11 correctly specifically gave an instruction to the jury that they
12 can consider the transcript for the truth of the matter asserted.
13 And even in the absence of a stipulation, I just want to make
14 sure that, that we all follow the right procedure so the evidence
15 can be admitted for all its purposes. And even though Mr. Martin
16 gave me the book, I can't actually find it.

17 THE COURT: No. You're right. You're right. You're
18 right. Have there been such instances?

19 MR. KURLAND: There's been at least three that I know
20 of.

21 THE COURT: Refresh my recollection, so to speak.

22 MR. KURLAND: You mean you want to recollect? Mr.
23 Hanlon brought up one, one I was talking about the break. I
24 don't mean to -- it was, think it was Jaquetta Smith, there was
25 some reference to grand jury transcripts. And my recollection is

1 also that the predicates, we'd have to look at the transcript,
2 also with respect to one of the Duganne sisters, there was, when
3 she made a statement about not, not naming people in the
4 Baltimore crew, I showed her her grand jury transcript and she
5 only named one and there was like three or four other ones that
6 she acknowledged that she had said that before the grand jury.

7 And again, I'm in the process of rereading all of Mr.
8 Montgomery's testimony. The way it came in, I'm not sure it
9 raised evidence conceivable that even with respect to Mr.
10 Montgomery there are certain aspects of his grand jury testimony
11 that were, that the predicates were established, the foundations
12 were established during the testimony. And there was a fairly
13 express or implicit acknowledgment that the grand jury
14 transcripts which he acknowledged making that statement was
15 inconsistent.

16 I just want to make sure that, one, we can deal with
17 that. But also in the future us, because I know that one or two
18 witnesses, I think the issue's going to arise again. I just want
19 to make sure for somebody that has not practiced before you
20 before, that when it's presented, that if we want it in for the
21 truth of the matter asserted in addition to impeachment value,
22 that it's done, one, in an appropriate way, in a way that is
23 consistent with the way the Court would want it done.

24 THE COURT: Yeah. I don't have any particular
25 requirement other than certainly, help me out, give me a list, or

1 whatever you can give me. Because if in closing argument you
2 haven't alerted me that you're going to be urging the jury to
3 treat grand jury testimony as substantive evidence, then I'm
4 probably going to sustain the objection unless you help me out in
5 advance.

6 MR. KURLAND: Sure, Your Honor.

7 THE COURT: I just don't have a clear recollection of
8 any such instance. I mean, sure there have been, you know, there
9 have been around the edges, different emphases. And I guess one
10 or two outright inconsistent statements. But nothing that struck
11 me as the kind of thing that you would want to actually stand up
12 and say, Although he said it here in the courtroom, what he said
13 in the grand jury is so different and so important that you ought
14 to accept what he said in the grand jury.

15 MR. KURLAND: Well, there might be one or two coming
16 down the pike.

17 THE COURT: Okay.

18 MR. KURLAND: But I just wanted to generally alert the
19 Court now. And we'll make sure that, one, that it's formally --
20 I know if you don't bring it up at the immediate time you might
21 lose the benefit of getting an immediate instruction. But as
22 long as the Court at some point, the jury's made aware, okay.
23 That's sufficient. Thank you, Your Honor.

24 THE COURT: All right. Mr. Harding.

25 MR. HARDING: Judge, I have to object to an attorney

1 waiting until six weeks into a trial and then sort of invoking
2 vaguely the existence of all of this prior evidence that he
3 thinks ought to come in and can I please have a time to get
4 together a list. Evidence should come in when the witness is on
5 the stand. Otherwise, we don't have a chance to address the
6 issue when we do redirect or whatever. And it's just completely
7 improper for Mr. Kurland to deal with this issue this way.

8 He needs to, if he wants a piece of substantive
9 evidence to come in, be it from a grand jury passage or whatever,
10 he needs to address that issue when the witness is on the stand.

11 THE COURT: The point is well taken, Mr. Harding, to be
12 sure. I mean, that's what I was getting at in my final comment
13 to Mr. Kurland. But I don't think there's any harm done. Mr.
14 Kurland.

15 MR. KURLAND: Your Honor, the only, I appreciate the
16 Court's comments and the Court hasn't, and the Court's current
17 ruling. Will be more my fault that in the future, but also the
18 general rule is that if evidence comes in absent any limitation,
19 even if it's otherwise inadmissible, whatever, it comes in, it
20 can be considered for all purposes.

21 So the kind of default rule is is that all the
22 statements and the references are admissible for all purposes,
23 including the truth of the matter asserted. That's the general,
24 absent a limitation.

25 And the Court's been very, you know, on top of making

1 sure there are the limitations. So absent a specific limitation,
2 the evidence is in for all purposes regardless.

3 THE COURT: I think your point is well taken as well,
4 Mr. Kurland. It's a practical problem. You're bringing it up
5 now. Mr. Harding feels you should have brought it up much sooner
6 on a witness.

7 MR. KURLAND: Being a lawyer in all this.

8 THE COURT: Sure. I understand that. But my point is
9 the reason you're bringing it up now, I think, is because as a
10 result of what we went through with Ms. Green this morning, it
11 was crystallized in your mind. Of course. I get that.

12 But you know as well as I do that if you had waited
13 until closing argument to say, oh, by the way, Judge, seven weeks
14 ago there was this witness --

15 MR. KURLAND: Yes.

16 THE COURT: -- who contradicted himself while on the
17 stand and I want to say to the jury that you can accept the
18 witness' grand jury testimony for the truth of the matter, you
19 know that wouldn't wash.

20 MR. KURLAND: No, it would not.

21 THE COURT: That's really all Mr. Harding is getting
22 at. Okay.

23 Thank you very much. All right. Have a pleasant
24 weekend. I think we're getting to the point where I'd really
25 like to get jury instructions at your earliest convenience. I've

1 got them from the government. I've got them from Mr. Martin. If
2 anybody wants to add to what's been submitted, I'll be happy to
3 get that.

4 Mr. Coburn, I'd appreciate if you could, I know a
5 you're hard worker, I get these e-mails from you at one a.m. But
6 if you can get something in or Massiah, whether you want to
7 pursue something, I'd like to, I would really like to conclude
8 the government's presentation by the end of the day on Thursday.
9 I think that would be very useful if we could, if we could do
10 that and then have Friday morning for argument on motions,
11 discussion of jury instructions, and scheduling and defense
12 witnesses and all the things that we're going to need to talk
13 about once we conclude the government's case in chief.

14 MR. COBURN: Absolutely, Your Honor. I'll do it in the
15 next couple of days.

16 THE COURT: Thank you, Mr. Coburn.

17 MR. KURLAND: Judge, two other quick things. We'll get
18 in some proposed instructions early in the week. The other thing
19 is we filed a motion prior to Montgomery's testimony with respect
20 to a particular piece of evidence being admitted under Rule 807,
21 the taped transcript. We argue that that should be admitted for
22 the truth of the matter asserted under the residual exception.
23 It was timely filed prior to his testimony. And if the Court
24 would take a look at that over the weekend as well. Because that
25 kind of dovetails into some of the issues we've been raising.

1 THE COURT: This was one of the proffer sessions?

2 MR. KURLAND: It was, it was the, it was the taped
3 proffer session that Mr. Coburn played fairly substantial
4 excerpts of. And we briefed that as to why we think under the
5 circumstances that should be admissible, not just for impeachment
6 value, but for the truth of the matter asserted.

7 THE COURT: Is there a Bruton --

8 MR. KURLAND: No.

9 THE COURT: There's no Bruton issue in there?

10 MR. KURLAND: No. It largely goes to the issue of when
11 he said, when Montgomery said that Mr. Gardner said that he had
12 lost a significant amount of money. And we specifically ask that
13 that be admissible, not just for the impeachment value that it's
14 obviously admissible for, but the truth of the matter asserted.
15 And that's briefed in our 807 motion.

16 THE COURT: I'm not sure I'm following that. The
17 government put that evidence in. It's in affirmatively that Mr.
18 Montgomery said that Mr. Gardner said that. And that's
19 substantive evidence.

20 MR. KURLAND: I mean, if he said it separately, that's
21 one thing. But it's also on the tape. If he said it
22 substantively, it's mooted. If he didn't say it specifically the
23 way he said it on the tape --

24 THE COURT: Well, I recall that rather clearly he said
25 Mr. Gardner had lost a lot of money or whatever, and then there

1 was this business about Mr. Martin needing money. And I remember
2 Mr. Harding's redirect specifically, there was questions about,
3 Did anybody ask you why else Mr. Gardner wanted to rob Darius
4 Spence? And the answer was no. And then there was some other
5 testimony around that.

6 So I am confident that it is in the record, that Mr.
7 Montgomery, and indeed Mr. Montgomery said, that's what I said,
8 that Mr. Martin, Mr. Gardner had lost sold money. In fact, he
9 didn't say some money. He dropped a thousand or --

10 MR. KURLAND: Yes.

11 THE COURT: There was some idiom used because there was
12 a follow-up about, what does that mean?

13 MR. KURLAND: If that's in as substantive evidence then
14 that's --

15 THE COURT: It's in as substantive evidence, yes,
16 absolutely.

17 MR. KURLAND: I'll be quiet now.

18 THE COURT: Okay. Thank you all very much. See you on
19 Monday.

20 (Conclusion of Proceedings at 3:35 p.m.)
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REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Willie Mitchell, Case Number(s) AMD-04-029, on October 29, 2008.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my signature this ____ day of _____, 2009.

Mary M. Zajac,
Official Court Reporter

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